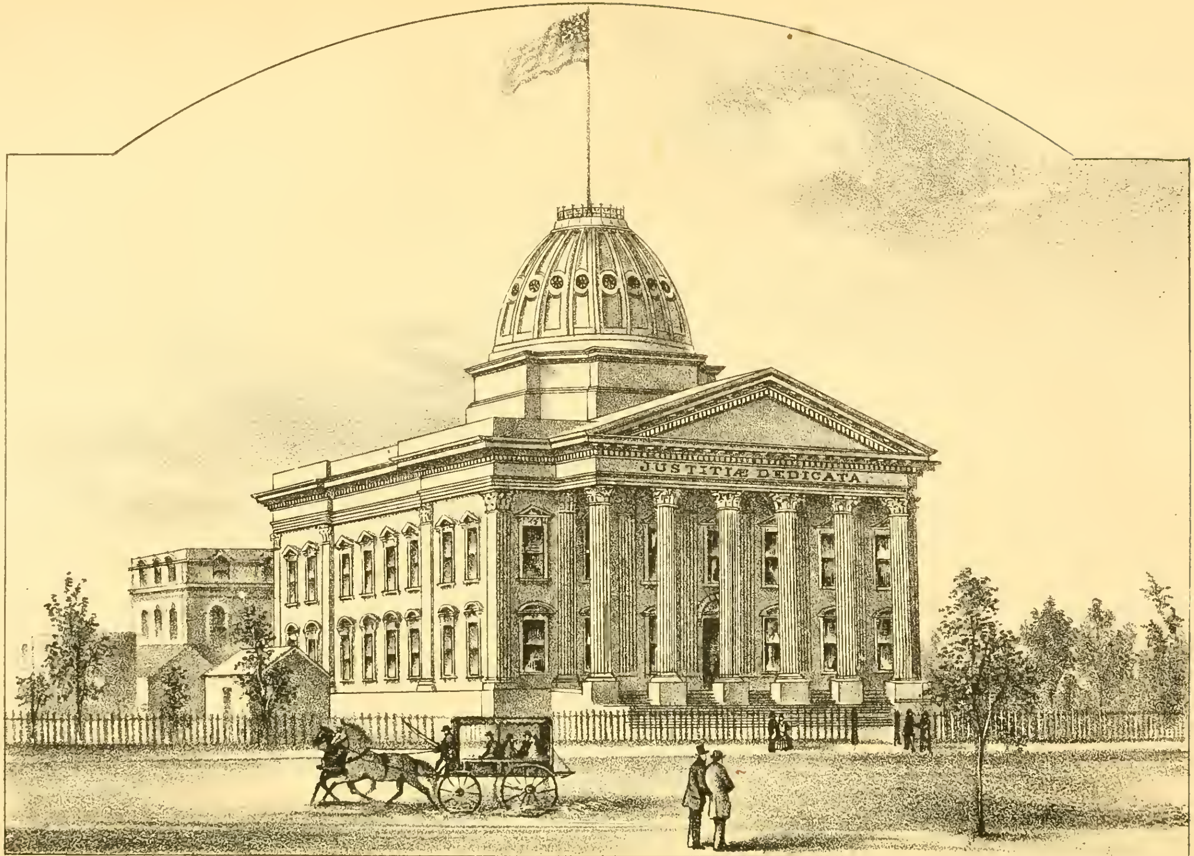


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COURT HOUSE, SAN JOSÈ.

THE

HISTORY OF SAN JOSÉ

AND SURROUNDINGS

WITH

BIOGRAPHICAL SKETCHES

OF EARLY SETTLERS

BY

FREDERIC HALL

Author of the "Life of Maximilian"

ILLUSTRATED WITH MAP AND ENGRAVINGS ON STONE

SAN FRANCISCO

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PREFACE.

The principal events which have occurred in the Valley of Santa Clara, from its first settlement by the whites to the present time, must ever be regarded important to the people of the State; and particularly to the residents of the Valley, and to their relatives and intimate friends who reside far beyond the confines of California. This portion of the State has been denominated its "Paradise"; and, perhaps, not altogether without reason.

Inquiries have frequently been made, by strangers here from the East, for its history; and, in most cases, the answer that there is no such history has been heard with surprise. The facts which present themselves to the stranger's mind, namely: that this Valley contains the most ancient Pueblo in the State; two old Missions; and the New Almaden Quicksilver Mine, were enough from which to draw a reasonable conclusion that some collection of their past events should have been given to the public in an historical form. Having resided many years in the Valley, knowing many facts pertaining to its history, and feeling much interest in its prosperity, I have been prompted to exert my best endeavors to place before the public what should not be buried, and what ought to be considered interesting annals.

The reader must be aware, that although he, who narrates the annals of an American city, may have furnished him many interesting facts, yet he is, in a measure, deprived of a flood of rich materials which swell up before the historian who attempts to portray the history of a nation, situated within the boundaries of Europe. There he may gather tales of heroic games, of daring deeds of armory, shield, helmet and spear, to give lustre to his pages; he may delineate with exactness the history of courts, parliaments, emperors, and kings; he may paint in exquisite shades their apparel, their stately mansions, richly adorned parks, baronial keeps, and castles o'erhung with ivy; which delight and intoxicate the mind like a draught from the cup of enchantment. While I have been deprived of drawing from depositories of such glittering wealth, I have recounted those facts which encompass the attractive spots which the inhabitants of this Valley call their HOMES,—spots ever dear to the human race.

It has been with no small amount of labor that I have dug up, from the almost hidden recesses of the Mexican archives, the events which make up the early history of this Valley. No history of the movements of the contending forces in this Valley, during the Mexican war, has ever before been published or written.

I have given, in the Appendices, lists of officials, the Pueblo survey and map, the grants in the county, and the suit against the city; also, the Mexican laws which once governed the territory, and the laws regulating the founding of Pueblos; which laws are difficult of access, and more so of purchase, as there are none for sale except in this work. The error in Chapter II, p. 9, in the name of the high mountain east of San José, was detected too late to be corrected. For "Washington" read "Hamilton."

I must acknowledge the benefits I have derived from the valuable "Colonial History of San Francisco," by John W. Dwinelle; also, from "The Natural Wealth of California," by T. F. Cronise. I must likewise express my gratitude to R. C. Hopkins, Keeper of California Archives, and John T. Colahan, City Clerk of San José, for their kindness rendered me in pursuit of materials. I would also record a just sense of the courtesy of Mr. Levi P. Goodrich, in favoring me with drawings of Santa Clara street, the Legislative Hall and the Juzgado, for engravings in this work; and, finally, extend many thanks to Mr. James A. Forbes for much early historical matter.

F. H.

San Jose, California, December, 1870.

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CHAPTER I.

1708–1770.

Civilization of the Americas.—American Colonies.— Their Conflict with Great Britain.—Adventures of the Spaniards.—Charles III.—His Character.—The Aztecs.—Their Traditions.—Indian Traditions of Upper and Lower California.—The Californias considered as an Island a century ago.

During the last half of the last century there existed a great vigor of thought, a great physical activity in the advancement of civilization in the Americas. It is true, that emigration from Great Britain to her Colonies was, for a period, brought nearly to a cessation. Dr. Franklin observed, before 1760, that "There has not gone from Britain to our Colonies, in these twenty years past, to settle there, so many as ten families a year." But this did not evidence a paucity of resources, nor, that a fair industry was not amply remunerated in those oppressed Plantations. There did exist a restlessness, a defection; a determination sooner or

later to paralyze the hand of oppression, to crush the heart of insolence, to resist unjust taxation, and to extend the area of freedom of thought, of expression and of action. The fires that were heating the political cauldron were fed by continued acts of oppression imposed by the Mother country; until, at last, a general conflagration overspread the whole people, and the Colonies became the theatre of a momentous struggle, the final result of which has produced an everlasting influence upon the interests and destinies of mankind. While England was thus in stubborn conflict with those Colonies, the Spanish tide of adventurous enterprise was rolling over the boundless regions of the Western empire,—rich and luxurious provinces,—lands bathed in a genial clime,—lands, too, endowed with the alluring and, sometimes, fatal gifts of silver and gold.

From 1759 to 1780, Charles III. swayed the sceptre on the Spanish throne. He was a kind-hearted and generous prince, a man of more than ordinary intellectual power, and of considerable executive ability. In all those qualities far superior to his half-brother and immediate predecessor, Ferdinand IV.; and, in generosity and consideration for the welfare of his subjects, in ideas of progress, and vigor of mind, he infinitely surpassed his profligate son and successor, Charles IV. He had paid much attention to finance, commerce and agriculture while he was King of Naples, and the

acquirements thus made were of immense value to him after the acquisition of his new throne. We cannot deny that he possessed, to a great degree, that trait so characteristic of the House of Bourbon,—fondness for the chase. His European domain was but a hand's breadth in comparison with his vast American territories. He gave great impetus to commerce and to agriculture. Although the distant possessions of Mexico and the Californias were under the immediate government of his Viceroy, he was not unfamiliar with their respective conditions. His gifts were liberal in the disposition of his uncultivated lands, and by virtue thereof he induced his subjects to settle on his new and unexhausted soil.

As the successive changes in this territory pass in review before us they will exhibit four different governments: that of Spain, of the Empire under Iturbide, and those of the Republics of Mexico and the United States.

So far as we can glean from historic or traditional fields, the ancestors of the Aztec race, that battled against the encroachments of the proud Spaniards, went forth from the North to people the broad and fruitful plateaus, and valleys of Mexico. But we are at as great a loss to define the boundaries of that "North," as we are to ascertain whence and when the human race first migrated into Italy. The great depositaries of history and tradition have furnished no proof of

either. The domain through which courses the Gila and Colorado, still possesses some debris supposed to be the remnants of rude architectural structures of the semi-civilized Aztecs. Whether the beautiful valleys of California *this* far North were ever held in subjection by that race is unknown. Such an inquiry may offer some temptation to the fanciful antiquarian, but the paths will all doubtless lead him into the realms of enchantment, where he may cull flowers—not facts.

The Indians of Lower California, one hundred and fifty years ago and more, amused their children, and interested the stranger that came within their hunting-grounds, by relating the legends handed down by tradition about their ancestors. They told how the big chiefs among those ancestors fell into a dispute at a great banquet; how they became enraged; how they fought, and how the conquered parties advanced to the South and rested in that southern land, far away from the victors. But the Indians of Upper California were of far less capacity; they had not equal courage; they had less physical and mental power; they were indolent and ignorant in comparison with those who dwelt in the South and East. In fact, it is not known that they ever had any tradition among themselves as to their ancestors, or scarcely any as to their country.

The most civilized nations of the world knew but little about Upper California until the last

quarter of the last century. Capt. Woods Rogers, commander-in-chief of the expedition around the world, made in the ships Duke and Duchess, of Bristol, which was commenced in 1708 and finished in 1711, in speaking of California says: "It is not certainly known whether it be an island or joins to the continent. The Spaniards told me that some of their folks had sailed as far up as latitude 42° N.; meeting with shoal water and abundance of islands dared not go farther. Shoal water and islands are a general sign of being near some main land. The Dutch say they formerly took a Spanish vessel in those seas which had sailed around California and found it to be an island. That cannot be depended on."

Father Kühn ascertained to his satisfaction in 1709, that California, or the peninsula, as he termed it, joined the continent. Even a century ago, European geographers placed California on their maps as an island. Archbishop Lorenzana wrote in his history of New Spain, in 1770, that "It is doubtful if the country of New Spain does not border on Tartary and Greenland—by the way of California on the former, and by New Mexico on the latter." Such was, one hundred years ago, the scanty and imperfect knowledge possessed by civilized nations of this now far-famed land.

As tradition has served us to no purpose, we shall commence with the Spaniard who, as he advanced into his new possessions, carried the pen and ink, and from his records we may trace him and his various acts down the stream of Time, and form therefrom a part of the history we herein relate of a small, but the fairest, portion of this Great Republic.

CHAPTER II.

1767–1780.

The Viceroy.—Junipero Serra.—First Settlement in Upper California. —San Diego, San Carlos, San Francisco and Santa Clara.—Topography of the Valley of Santa Clara.—Errors in "Natural Wealth of California."—Astronomical Position of San José.—First Settlement of San José.—Comandancia-General of the Northern Provinces of Mexico.—Instructions of Viceroy.—Approval by the King of the Founding of San José.

I SHALL make no apology for stepping over the municipal confines of San José in this history, inasmuch as there were many occurrences without its territorial limits that bear indirectly upon its annals. And further, the Pueblo extends its area far beyond the now city limits.

The immediate conclusion to civilize and settle Upper California, arose from the expulsion of the Jesuits from Lower California in 1767. Marquis de Croix, Viceroy of Mexico, having, in 1768, concluded that it was time to know more about this distant land and to enlighten its natives, entrusted the enterprise to the priesthood, and nominated Father Junipero Serra, a Franciscan friar, as Missionary-President of Upper California. He took with him sixteen brothers of his own Order from the convent of San Fernando, in the city of Mexico. He arrived at San Diego July 1st, 1769,

and on the 16th organized a mission there. The first native was baptized there December 26th of that year. The Mission of San Carlos, at Monterey, was founded June 3d, 1770. The Presidio at San Francisco was established September 17th, 1776, and the Mission of San Francisco de las Dolores, October 9th, 1776, and the Mission of Santa Clara, January 18th, 1777. The foregoing data are herein given that the reader may carry them along in his mind as he contemplates the history we are about to record of that town of an almost contemporaneous creation.

The city of San José, pronounced *San Hosay*, and written in English *Saint Joseph*, formerly known as the Pueblo de San José de Guadalupe, is situated on the right bank of the Guadalupe river, about eight miles south of the bay of San Francisco, in the county of Santa Clara, and in the broad and beautiful valley which bears the same appellation as the county. Although the land which encircles San José, for a very considerable extent, has been christened "Santa Clara Valley," yet the domain thus denominated is but a part of the great valley which embraces several counties, and sweeps down from the city at the Golden Gate in one apparent uniform level to San Juan South, a distance of more than ninety miles. The ancient name of this great valley at the time of its first settlement was San Bernardino, from San Francisco to San Juan Bautista. It is oval

in form, and its width at San José is about fifteen miles. At about four miles south of San José, small hills, *Lomas Lagrimas* (Hills of Tears), appear to fence in the valley; but they are not extensive, nor do they obstruct either road that leads southward. They are probably about two miles in extent at their base.* Eight miles farther south the valley narrows to a width of nearly three miles, and thus extending six miles farther, when it gradually expands to a breadth of some six miles and so sweeps onward. On either side the valley is bordered by a chain of mountains running northwest and southeast, and ranging in altitude from one thousand to nearly four thousand feet. Directly east, and about twelve miles on an air line from the city, is Mount Washington, 4,448 feet high. The western range near the Almaden Mines is crowned by two peaks, standing like sentinels watching the precious metal emboweled in the surrounding hills, but firmer on their base than that metal which oozes out in silver streams from these mercurial fountains. The one termed by the Indians Choual, is 3,530 feet in altitude. The other, Oumouhum, since named Mount Bache, is 3,430 feet. On the western mountains grows the tall and stately redwood (*Sequoia Sempervirens*), so serviceable for building timber—so stubborn in

* These hills are so named because in early times, when some of the early settlers were coming up from the State of Sonora, they stopped there, and their provisions giving out caused the children to cry.

resisting the march of decay. Also many oaks and madroña shade nook and ravine. The eastern range, which slopes down in irregular curvilinear lines, bears a scanty forest of oaks; but its grassy knolls and nooks, intermingled with its multifarious wild flowers, in their vernal freshness array themselves in rainbow-tints in the rays of the gorgeous West.

From out those eastern hills, at a distance of twenty-five miles from San José, the Coyote stream takes its rise, and leaping among the hills in a westerly course until it flows into the valley at a distance of eighteen miles southeast of the city, it circles around to the northwest, and meandering through the valley by the eastern confines of the city, empties its contents into the bay of San Francisco. During the rainy seasons this stream rushes torrent-like, surging first on this then on that side, gullying out its banks and freighting in its swiftness the mud and sand scooped therefrom into the salt-water basin of the sea. Then in the dryness of Summer heat it is as quiet as a gentle lamb, calmly meandering, as if reluctant to leave the luxuriant valley, scarcely moving, scarcely moistening the sparkling sand below. It bore its present appellation last century, from the fact, I presume, of there being so many coyotes (*canis latrans*), in the valley and along its banks. This animal partakes of the nature of the fox and wolf. Its skin is sometimes sold from fifty cents

to a dollar. Its bark is less harmonious and musical than the Chinese gong; and the weary midnight traveler would prefer the gruff voice of the storm to the death-like howl of this sneaking beast.

The river Guadalupe, named after the patron saint of Mexico, has its source about one league southwest of San José, in the place called Souzal. It is fed by springs and other small streams. It runs in a northerly course until it comes near the city, then turns and courses northwesterly, and pours into the San Francisco bay. It is always supplied with water, and for that reason the Pueblo was laid off on its bank that the settlers might be provided with sufficient water for irrigation. It is clogged with floodwood, and to that fact may be attributed its occasional overflow in the seasons of very heavy rains. It needs to be dredged; were that well done, there would be no room for fear in the heaviest rains. The damage from its overflow has been very slight, and might be entirely remedied as suggested.

Before proceeding further with our narration, I must call the attention of the reader to the almost unpardonable mistake made in the description of the two foregoing streams, the Coyote and the Guadalupe, in "The Natural Wealth of California," by Titus Fey Cronise. He says: "These have their source in a lagoon in Penetencia Cañon, and, after flowing a few miles

among the mountains on the east, approach San José, and then unite and empty into San Francisco bay, near Alviso." As the two streams run parallel to each other, and about two miles apart, the description is ludicrous. To a resident of San José, such a departure from the truth needs no explanation. But I am addressing myself, in this respect, more particularly to the stranger. I speak of it out of no unkindness to the author, for whom I entertain a high respeet: nor do I desire to detract from a work which is of great value to the State, and a passport of the qualifications of its author. He has explained to me the cause of the error. He relied on another person, who promised to give him a correct statement of facts. How well that person complied with his promise, the reader can judge. I deem it a duty which I owe the public to correct herein the great error, as the author has spread before the world a plot of the ground which I have attempted to portray.

The rivulet known as the Aguage, but erroneously called by some La Penetencia, and named by the Indians Shistuk, has its origin in the eastern mountains, from which it runs in a westerly course into the valley, and loses itself in the low ground: and in the rainy seasons floods the land on which stands the patch of willows near the premises of James Murphy, and whence springs the little stream, the true appellation of which is La Pene-

tencia (Penitence). Its Indian name was Yukisma. This latter stream has a northerly course, passing by and near Milpitas, and discharges itself into the estuary or bay. It received the name of La Penetencia from the fact that the priests from the Missions of Santa Clara and of San José used to meet under the shady oaks near its banks, and *confess* their sins to each other. About every two months might have been seen a calesa—a two-wheeled vehicle, with windows on the sides and in front, but no glasses in them, drawn by two mules, and followed by half a dozen servants, winding its way from the Mission of Santa Clara to that little purling brook. If a looker-on would have turned his eyes toward the Mission of San José, he might have espied another priestly train, bearing about the same aspect. The passers-by knew at a glance that in all that splendor, (for such it was then in this country,) rode one, or perhaps two, of the gowned fraternity. Two persons filled the carriage. These vehicles were manufactured at the Missions.

Returning to topographical descriptions, we will add, that there are numerous other streams in the valley which are of much importance in connection with San José and the valley generally, having mill-sites, which are used for manufacturing and milling purposes.

The absolute or astronomical position of the city of San José is in 37 deg. 20 min. 50 sec. north

latitude, and 121 deg. 51 min. 35 sec. west longitude. Its history dates back to the time of the terrible struggle for American Independence, from that ever memorable year when, at Saratoga, the final issue of that war was sealed by the complete overthrow of the British forces under Gen. Burgoyne; the same year, too, that the bright countenance of that true patriot Lafayette first radiated over the American people. These facts may serve as remembrancers of the Pueblo's natal year.

Señor Don Felipe Neve, Governor of New or Upper California, was required, among other things, to inform his Majesty the King, through the Viceroy of Mexico, as to the topography, character, and condition of this country, and what locations were most suitable for settlements. He had examined the country from the Presidio of San Diego to that of San Francisco; and having come to the conclusion that the tract of land (now Los Angeles) which lies contiguous to the river La Porcincula, forty-two leagues from San Diego, and two from the Mission of San Gabriel; and also that tract on the margin of the river Guadalupe, twenty-six leagues distant from the Presidio of Monterey, sixteen from that of San Francisco, and three quarters of a league from the Mission of Santa Clara, were the most advantageously situated for Pueblo settlements, thus reported to the Viceroy, by letter bearing date June 3d, 1777. He also solicited therein authority to establish Pueblos on the above-mentioned sites.

The distance to the City of Mexico being so great, the opportunities of communicating therewith so unfrequent, the absolute necessity of being independent of the arrivals or non-arrivals of vessels from Mexico for the necessities of life, and the conveniences, as well as the great economy which the production of cereals and vegetables here would inure to the royal treasury, were sufficient reasons in the mind of the Governor to determine him to wait no longer for the solicited and long-expected authority. He therefore resolved to form the settlement of a town. In accordance with this resolution, he ordered Don José Moraga, Lieutenant-Commandant of the Presidio of San Francisco, to withdraw from the garrison of that Presidio nine soldiers, skilled in agriculture, and two settlers, which, together with the three obtained for that purpose, completed the number of fourteen settlers. The Lieutenant-Commandant, with his little band of adventurers, on the 29th day of November, A. D. 1777, planted themselves near the river Guadalupe, designated their camp as a Pueblo (Town), and assumed for its tutelary divinity the holy Saint Joseph. The same sun that smiled on them, in the arduous duties of their new enterprise, cheered the weary soldiers that were gathered around their camp-fires on the shores of the Atlantic.

Although they had advanced into a new territory, surrounded by the wild natives, and heard

not an intelligible word lisped, save from among their own little group and from the few at the neighboring Mission, yet their hardships did not compare in severity with those experienced by the hardy settler that first made foot-prints among the deep forests on the northeastern coast of North America. There the inclemency of the climate in the rigor of winter, the hostility of brave Indian warriors, the huge trees that were to be felled before the necessaries of life could be brought forth—all, all these made their lives laborious and hazardous in the extreme. The rifle was the usual accompaniment to the woodman's ax, and the trees themselves were as battlements, from behind which the fatal arrow often winged its flight to the heart of the sturdy adventurer.

Here, on the Pacific coast, a balmy climate favored the colonists. It is true that the Indians were numerous, but, as warriors, they sank into insignificance by the side of the Eastern red-men; nor were they inclined to bring on a conflict with a race superior in the art of war, and with soldiers that were encased in thick buckskin, through which the arrow could not penetrate. Here, too, a vast plain surrounded the new-comers, all ready for the plow—not a stone, nor tree, nor stump impeded the plowshare. Indeed, the trees in the valley were so few that it would have been con-considered barbarous to have unnecessarily felled them: and now the voice of civilization cries

out, "Woodman, spare that tree!" as man wantonly strikes the ax into its trunk.

Although time was requisite, as well as labor, to produce the sustenance of life in vegetable form, animal food was by no means scarce. Rabbits were plenty, and the nimble-footed deer and antelope frisked and bounded over the plain and the hills, innumerably; and when the huntsman took down his gun and skulked out behind a bush, perchance a tree, it was not long before the echoing rifle told the settlement the glad tidings that their next meal would be made on venison—to them as sweet as the richest repast ever set in kingly hall.

Governor Neve, on the 15th of April, 1778, wrote the Viceroy, informing him that he had founded the Pueblo de San José, stating at the same time the full particulars in relation thereto. The Governor received, in reply, a letter from the Viceroy, bearing date the 22d of the following July, expressing great satisfaction for the information which he had communicated, as well as for the acts the Governor had performed; and stating also, therein, that great utility would result from the establishment; that the effect would be that within two years the crops would be sufficient to supply the Presidios, resulting thereby in much economy, in lessening the expense of the royal treasury, and in the extension of the Catholic

religion among the heathens who inhabited the country.

In order to relieve the Viceroy of Mexico of some of his duties, or rather to aid him in carrying them out, a Comandancia-General de Provincias Internes was created. This Comandancia originally embraced several of the most northern Provinces of Mexico. The extent of its territory rendered the duties attached thereto quite onerous. In consequence thereof, and upon the solicitation of the Comandante-General, the King subsequently caused a division of the territory, so that one division was termed the Comandancia-General of the Four Interior Provinces of the West, and which embraced the Californias, Sonora, New Mexico, and Vizcaya. Its chief officers were one Comandante-General, one Comandante-Inspector, and three Ayudante-Inspectors. The Comandante-General did not remain permanently at any fixed place, but passed from town to town, as duty required. He was next to the Viceroy in authority over the territory within the confines of his Comandancia.

Don Teodoro de Croix was the Comandante-General of this Comandancia for quite a period. He signed his official documents "El Cavallero de Croix," the Knight of the Cross. He notified the Governor of California by letter dated at the *Pueblo de Nombre de Dios* (Town of the Name of God), which I understand to be Arispe, July 19th, 1779,

that by royal order the King had approved the founding of the Pueblo de San José. A copy of that order was transmitted with the foregoing letter. It bore date March 6th, 1779, and states that the King has been informed that the Governor of California, Don Felipe de Neve, had established a new settlement of nine residents on the margin of the river Guadalupe; that his Majesty has been pleased to approve the same, and that he desired El Cavellero de Croix particularly to charge Governor Neve to have care that the new Pueblo may aid and not prejudice the neighboring Mission. Antonio Bruillo certifies as Secretary of the Comandante, July 22d, the same year, that the original of said royal order is on file in his office.

On the 27th of the following December, the Comandante-General, under the romantic signature of The Knight of the Cross, communicates with Don Fernando de Rivera y Marcado, Comandante of the Presidio of Monterey, giving him much advice, many instructions, and his opinion relative to the government and welfare of the Californias. He sets forth therein that for the proper defense, preservation and protection of the Californias, in which "the service of God and the King were particularly interested," he has determined upon the occupation of the channel of Santa Barbara, by establishing a presidio of the same name and three missions; also a Pueblo with the title of "Reyna de los Angeles" (Queen of

the Angels), on the river Porcincula; and that his Majesty has approved of the one on the banks of the Guadalupe river, called San José. That in order to ensure success in these new and important establishments, the Governor of the Province, Don Felipe Neve, had solicited in several petitions that the said Don Fernando de Rivera y Marcado be sent to this country; to which he, El Cavallero de Croix, had cheerfully consented; and that the occasion had now arrived for zealous exertion in the carrying out of his instructions.

The chief instruction was in regard to the recruiting of families and soldiers for California, so that this Province should not suffer injury from the sparseness of its population; and also that the increase of horses, mules and other things necessary for the promotion of the old and new establishments of the peninsula should be attended to. Don Fernando was especially charged in preference to anything else, to carry out the arrangements which the gallant Knight of the Cross had made; to report his prospects before he set out from the Capital, Monterey, and during the exercise of his commission, and particularly to report all doubts and difficulties which presented themselves, in order that he, the said Knight, might remove them if possible.

In Article 14th of these instructions the distinguished Cavallero especially declared that Don Fernando should not deceive the recruits by offer-

ing them more than they were actually to receive; and being aware, he observes, that this is a delicate point, it requires further explanation. He then, as explanatory, calls his attention to the fact that the recruits for the Pueblos were to receive the monthly pay of ten dollars and the ordinary daily rations for the period of three years. To each one was to be given two cows, two oxen, two mares, two beeves, one mule, two sheep, two goats and the necessary implements for the cultivation of the soil. But the said recruits were to reimburse the royal treasury for all these articles thus received by them, excepting their monthly pay and rations. This reimbursement was to be made in installments, from the sale of fruits, grain and cattle; but in such a manner as would leave them a sufficiency for a comfortable subsistence. Such were the provisions made for the civil settlers, but for the military recruits it was somewhat different. Inasmuch as the latter enjoyed a fixed and better pay and were governed by foreign rules, that is, military regulations of Spain, they were to pay in reasonable installments the expense which the enrolment of themselves and families occasioned, and that of the cavalry equipments, arms, provisions and horses.

El Cavallero further advised Don Fernando that the common people had circulated false reports, thereby causing it to be believed that great losses were to be sustained by reason of the dis-

count on the pay of the officers, troops, and inhabitants of Pueblos; and that these reports might deter many from taking advantage of the occasion which was presented to them to obtain an honorable and happy home, and to do lawful service to the King which would merit in every respect his sovereign pleasure, and a just recompense. In order to do away with these false reports, he counseled Don Fernando to proceed in accordance with the dictates of prudence and truth, which he says "are the governing principles of my orders," under the guidance of which he endeavored to apply an efficacious remedy to the evils which he was persuaded existed more in appearance than in reality. He further remarked that the evils did not result from the regulation of the service, but rather from the loose manner in which they were observed, and that they might be easily remedied by systemizing the regulations, and changing those which experience had demonstrated should be modified, and then to enforce a vigorous observance of the same. The complimental Knight assured Don Fernando he was quite satisfied that the important commission entrusted to his care would be devotedly attended to; and, in consideration of his faithful performance of the same, he should not forget to inform his Majesty of this new service, that he might be pleased to confer upon him such favors as would be agreeable to his royal pleasure.

The Cavallero finally closed his epistle by declaring, that he would furnish all the supplies of clothing and other requisite articles for the recruits and their families, according to Article 22 of the Instructions, which recruits, he observes, "are to make their first march to the Alamos." Thus ended that important document, and with the familiar Spanish and Mexican farewell salute, "God preserve you many years."

El Cavallero de Croix, on the 9th of February, 1780, again turns his attention to California, and addresses himself to his Excellency Martin de Monjorga. He informs the latter that his Majesty the King, most particularly charges him, El Cavallero, to have especial care for the welfare of the Province of California, and that such is the principal purport of the royal instruction. He relates to Don Martin that Governor Neve, in consequence of the orders of his Excellency, the Señor Viceroy (predecessor of Don Martin) had proposed several plans in relation to the better defense and improvement of this important country. That he had carefully examined the several reports of the Governors, and that, as they deserved from him the same favorable opinion which they had received from the late Viceroy, he had ordered the occupation of the channel of Santa Barbara; that a Pueblo be established by the name of "La Reyna de las Angeles," on the Porcincula river; and that his Majesty had been pleased to approve of the

one founded on the banks of the river Guadalupe, called San José.

The repeated approvals, which we have already seen, by the King, of the Pueblo of San José, leaves no doubt that it was legally established.

El Cavallero, continuing his address to Don Martin, reminds him of the fact that the augmentation of troops is requisite, and that it is equally necessary to recruit families for the Pueblos; and to increase the stock of cavalry horses, and of various other things. The address contains a copy of the plan formed to facilitate the objects referred to, and in which Don Fernando was specially enjoined to observe a strict discipline; and Don Martin was requested to contribute his kind offices to aid him in the execution of the same. He further informs Don Martin, that he, El Cavallero, on his part, has made the necessary arrangements for the counting and making a list of the cattle, which the commissioned officer, Rivera, is to present as soon as he shall have finished the recruiting of troops and families for the Pueblos, and the collecting of cavalry horses, all of which will be provided for out of the royal treasury at Guadalajara and Alamos.

I have thus given the reader some insight into the procedure established by the King for the settlement of the Province of California, and shall proceed in the next chapter to relate the special proceedings in relation to the settlement of San José.

CHAPTER III.

1782-1785.

Governor Fages.—First Grants of Lots, and Possession Given, in San José.—Form of Grants; Conditions therein.—Slow Growth of the Pueblo.—Solicitations for Large Tracts of Land within the Pueblo; Refusal thereof.—Wood and Pasture Lands of Pueblo not to be Granted to Individuals.—Four Square Leagues the Area of a Pueblo.

Don Pedro Fages became Governor of California in September, 1782, and remained in the Gubernatorial chair eight successive years. On the 24th of December of that year, he appointed Don José Moraga, who was Lieutenant-Commandant at the Presidio of San Francisco, a Commissioner to go to San José, and, in accordance with the royal regulations, give, in the name of his Majesty the King, possession to the nine *pobladores* (founders) of their *suertes* (cultivable lands), *solars* (house-lots), and iron brands to mark their cattle; and to give titles to those lands. The Commissioner was ordered to appoint two assisting witnesses. This, the Governor says he orders, that the possessions may be uniform and regular, and that the citizens may know what is vacant land, and what is defined as common lands for pasturage, *ejidos* (vacant suburbs for buildings), and what is wood lands. It was ordered that the titles should contain the condi-

tions provided by the law of Title 14 of the Regulation for the Government of the Provinces, made by Governor Neve, at Monterey, June 1st, 1779, and approved by his Majesty the King, by royal order, October 24th, 1781; that the *poblador* should sign his title accepting those conditions; also, that the Commissioner and the two assisting witnesses should sign the same; that the titles should be sent to the Governor for his approval, and registered in the Great Book, and that a certified copy be given to the interested party, together with a copy of the order from the Governor to the Commissioner, that the *espediente* (the whole proceedings) might serve him as a title.

September 1st, 1783, the Commissioner made his report, signed by himself and his two assisting witnesses, setting forth that on the 13th day of the preceding May he had appointed Felipe Tapia and Juan José Peralta as assisting witnesses; that they then accepted the office, and certified in writing to the acceptance; that on the following day he summoned the nine *pobladores* and the assisting witnesses to appear before him; that they all visited the lands to be distributed, and that in their presence he gave them possession of their respective tracts of land, as follows:

The first grant, or possession, given was that of a *solar* (house-lot), thirty varas square, to Ignacio Archuleta, adjoining the *solar* of the Ayuntamiento (the lot on which stood the house of the Town

Council) on the one side, and on the other the lot of Manuel Gonzales; that he then went to the sowing lands and measured off four *suertes* (lands for cultivation), containing two hundred varas square, all of which were irrigable; and that he gave possession of the same to the said Archuleta.

That on the next day, the 15th, he gave to Manuel Gonzales the same amount of land; that the *suertes* of Gonzales were bounded by those belonging to José Tiburcio Vasquez, Bernado Rosales, Claudio Alvires, and Sebastian Alvitre; that the *solar* of Gonzales was bounded by that of Archuleta on the one side, and by that of Vasquez on the other.

That on the same day, he gave to José Tiburcio Vasquez the same quantity of land; that his *suertes* were bounded by those belonging to Francisco Avila, Bernado Rosales, Manuel Gonzales, and Manuel Amesquita.

That on the following day, he gave to Manuel Amesquita a *solar*, bounded on one side by that of Tiburcio Vasquez, and on the other by that of Antonio Romero; that he also gave him four *suertes*, bounded on one side by those of Claudio Alvires, and on the other by those of Tiburcio Vasquez.

That on the 17th, he gave to Antonio Romero a *solar*, bounded on one side by that of Manuel Amesquita, and on the other by that of Bernado Rosales; that he also gave him four *suertes*, bound-

ed by those of José Tiburcio Vasquez and Francisco Avila.

That on the same day, he gave a *solar* to Bernado Rosales, bounded by that of Antonio Romero on one side, and on the other by that of Francisco Avila; that he also gave him four *suertes*, bounded by those of Francisco Avila and Manuel Gonzales.

That on the 18th, he gave to Francisco Avila a *solar*, bounded on the one side by the *solar* of the Ayuntamiento, and on the other by that of Sebastian Alvitre; also, four *suertes*, bounded by those of José Tiburcio Vasquez, Antonio Romero, and Bernado Rosales.

That on the same day, he gave to Sebastian Alvitre a *solar*, bounded on one side by that of Francisco Avila, and on the other by that of Claudio Alvires; also, four *suertes*, bounded by those of Bernado Rosales, Claudio Alvires, and Manuel Gonzales.

And that on the same day, he gave to Claudio Alvires a *solar*, bounded by that of Sebastian; also, four *suertes*, bounded by those of Sebastian Alvitre and Bernado Rosales.

As he delivered the possession of the said respective lands, he gave to each *poblador* a branding-iron to mark his cattle. He also gave a title to each one, in accordance with the Governor's instructions. Surrounding each *solar* was an alley,

ten varas wide; and around each *suerte*, one of four varas.

He further reported that after having completed the delivery of the possession above-mentioned, he, the said assisting witnesses and the said *pobladeres*, on the 19th of said month went together to the "side opposite this Pueblo," meaning the west side, and to the river Guadalupe; that he measured from the crossing at the dam, running down the river as far as the boundary line or dividing line between the said Pueblo and the Mission of Santa Clara; said measurement being 1,958 varas to said boundary; the half of which was assigned to said Pueblo for *propios* (lands which were rented for the purpose of raising a revenue for the Pueblo), the other half being considered vacant, excepting the lands for *suertes* and *solars;* that the *ejidos* (vacant suburbs expressly for future grants of *solars* as the Pueblo increased, and for no other purpose), had been assigned out of that part where the ground was high, "where the Pueblo is situated," (meaning near the immediate neighborhood of the buildings), the length of which tract of *ejidos* is 1,500 varas, and 700 wide.

This report is somewhat vague as to the exact boundaries of the *ejidos*; a great fault indeed, inasmuch as under the Spanish and Mexican laws it was absolutely necessary to clearly define every class of pueblo lands and particularly the *ejidos*, as they were laid off around the town expressly

for building lots, and could not be granted for any other purpose. Prescription did not run against them. The neglect in official duty pertaining to San José, can only be accounted for from the fact that its growth was so slow during a period of seventy years, that any very exact description of the respective classes of land within its limits, was of but little importance to the government or the citizen.

The grants made to the *pobladores* had many conditions attached thereto. Among them were the following: They were to be perpetually hereditary to their sons and descendants, or to their daughters who married useful colonists that had received no grants for themselves, provided the whole of them complied with the obligations expressed in the instructions; and in order that the sons of the possessors of these gifts might observe the obedience and respect which they owed to their parents, the latter were freely authorized, in case of having two or more sons, to choose which of them they pleased, being a layman, to succeed to the house and *suertes* of the town. They could likewise dispose of them among their children, but not so as to divide a single *suerte*, because each and all of these were to remain indivisible and inalienable forever.

Neither could the colonists nor their heirs impose on the house or parcel of land granted to them, either tax, entail, reversion, mortgage or any

other burden, although it should be for pious purposes; and should any one do so in violation of this prohibition, he was to be immediately deprived of his property, and his grant would, *ipso facto*, be given to another colonist who might be useful and obedient. [See Appendix No. 3.]

The government archives contain a map executed by Moraga, bearing date April 23d, 1783, on which are drawn nineteen *suerte* lots, with the names of the owners thereon. There is nothing on record to explain why he did not give a complete map of all the lots he delivered possession of, or why no monuments were fixed to designate their exact location.

The reader has thus seen the account of the very first acts relative to the delivery of possession of lands within the Pueblo of San José; of the first titles ever given therefor, and of the assistance rendered by the King to those subjects who sought, with limited means of their own, to provide themselves and their families homes in a genial climate and on a rich and over-abundant producing soil, but then, in an almost unknown country.

Those who first saw the curling smoke go upward from the new settlement, saw likewise improvements slowly advancing. Their first houses were made of sticks or palisades and tule (coarse grass). A few patches of corn, wheat, and beans, and small herds of cattle, occupied the chief atten-

tion of the inhabitants, together with the making of adobes for the construction of their more permanent and necessary shelter.*

The wants of those settlers were few. Their herds and gardens soon furnished enough for the inner man, and their simple garments were supplied at high prices from the little freighted barks that plowed the sea along the coast, from Mexico.

But now, how changed! What a contrast we now perceive, as we hold up the picture of the last century by that of to-day! Under the auspices of another race, the land over which once roamed the wild herds, now blossoms as the rose—now glows with rich bloom and enameled vegetation; orchards and vineyards bowing with the weight of rich clustered fruit; and here and there embroidered with beautiful flower-gardens, exhibiting vast tablets of mosaic works. The surrounding air is filled with intoxicating perfumes, and the sweet melody of birds mingle with the continual hum of the busy honey-bee. We behold the city as a fair jewel, which Nature and Art combined has designed as a rich setting in the beautiful valley.

It appears that seven years after the establishment of the Pueblo, some of the settlers became a little greedy; not, however, unlike human nature of to-day. They were anxious to have al-

* The *adobe* is a sun-dried block of clay, about eighteen inches long, fourteen wide, and three thick.

loted to them large tracts of pasture land within the Pueblo limits. The Governor had been prevailed upon until he saw no great impropriety in complying with their seemingly moderate demands. But a higher officer, who viewed the premises from a greater distance, was not so easily impressed with the justice of the solicited favors. He evidently saw an over-anxious desire on the part of the solicitors to increase their possessions; to swell the number of their flocks, and to add to their coffers at the general expense of the community rights of the Pueblo. The Governor communicated the request of the petitioners to the Commandant-General, who referred the same to the Asesor (Attorney-General). And in that communication the Governor had not failed to suggest that he was not inimical to the demands—in short, he favored them. The Asesor, on the 27th of October, 1785, at Chihuahua, set forth his views on the subject, which were approved by the Commandant-General, and the same were transmitted to the Governor for his instruction. The Asesor called the attention of the Governor to the law laid down in the instructions which treat of the political government and population of California, as the same is inserted in Title 14 of the Regulations of this Peninsula, and which were approved by his Majesty, in the royal order of the 24th of October, 1781. He detailed to him the tenor of Article 8, wherein it is declared that the new

settlers shall enjoy for the maintenance of their stock the common advantages of waters and pastures, and wood and timber of the commons, which, in compliance with the laws, are to be marked out for every Pueblo. And also that each individual shall enjoy the pastures of his own lands unmolested. Said Article 8th also declares that thereafter no settler shall possess over fifty head of cattle of each kind, so that the usefulness resulting from the stock may be distributed among all, and the true wealth of the Pueblos not confined to a few residents. This was, indeed, a highly democratic view to be taken of such affairs by a kingly government. The Attorney-General, continuing his opinion, states that the allotting of tracts of land (sitios) for cattle cannot and ought not to be made within the Pueblo limits. That Law 6, Title 5, Book 4 of the Recopilacion provides that Pueblos shall embrace four leagues of land in a square or oblong form, according to the nature of the ground; and that within those limits the ownership of the pasture, water, timber, and wood lands cannot be vested in private individuals. But that such tracts (sitios) could be granted outside the Pueblo limits, with the condition, among other things, that the grantee should employ herdsmen to keep his stock from doing damage to the settlers.

Thus far, it is apparent that no law existed permitting a Pueblo to extend its limits beyond four

square leagues, whatever might be its form. Whatever authority existed afterward to warrant the Pueblo of San José in claiming more than that quantity will be hereinafter shown.

CHAPTER IV.

1792–1842.

Vancouver's Opinion of Santa Clara Valley in 1792.—The Indians of this Vicinity.—Their Name, Language, Habits, Mode of Living, Mechanical Skill, Implements.

I NOW propose to present the reader with a view of the beautiful valley of Santa Clara, drawn at a period fifteen years subsequent to its first settlement. Also to treat of the Indians of this vicinity. The artist who favors us with the view is the renowned Captain George Vancouver. As is well known, he sailed in 1791 to make the voyage "round the world." He took his chance upon the deep and spread his sail with no little eagerness to explore the novel secrets of the Western Hemisphere. In the Fall of the following year he visited this coast. It was the season of the year when heaven commences to lend its aid to earth in weaving the mantle of fertility and beauty. While at San Francisco he found he had a few spare days, and he was determined to avail himself of the opportunity of visiting the interior of this then wild country.

Monday night, November 19th, 1792, the wind howled and the rain fell in rapid and heavy drops. The next morning was clear and calm. A balmy

freshness pervaded everything—grass and bower sparkled like lightning gems. It was such a night, followed by such a day, as portrayed by the poet, when his all-inspiring genius breathed forth:

> "How calm, how beautifully comes on
> The stilly hour, when storms are gone;
> When warring winds have died away,
> And clouds beneath the glaring ray
> Melt off, and leave the land and sea
> Sleeping in bright tranquillity."

On that lovely morn Vancouver, and his little band of followers, set out for Santa Clara. He watched with extreme delight every part of the route. America presented a new field to the mariner whose pathway had been on the illimitable watery waste, and usually between ports long visited for commercial interest. I transcribe the following from his interesting sketch of that trip to this valley: "We considered our course parallel to the seacoast, between which and our path the ridge of mountains extended to the southeastward; and as we advanced, their sides and summits exhibited a high degree of luxuriant fertility, interspersed with copses of various forms and magnitude, and verdant open spaces encircled with stately fruit trees of different descriptions. About noon we arrived at a very pleasant and enchanting lawn, situated amid a grove of trees at the foot of a small hill, by which flowed a very fine stream of excellent water. We had not proceeded far from this delightful spot when we entered a country I

little expected to find in these regions. For almost twenty miles it could be compared to a park which had originally been planted with the true old English oak; the underwood, that had probably attained its early growth, had the appearance of having been cleared away and had left the stately lords of the forest in complete possession of the soil, which was covered with luxuriant herbage and beautifully diversified with pleasing eminences and valleys, which, with the lofty range of mountains that bounded the prospect, required only to be adorned with neat habitations of an industrious people to produce a scene not inferior to the most studied effect of taste in the disposal of grounds."

In speaking of Santa Clara Mission he observed: "It is situated in an extensive fertile plain, the soil of which, as also that of the surrounding country, is a rich black productive mold, superior to any I had before seen in America." He remarked that they here cultivated wheat, maize, peas and beans; that they plowed with inferior plows, turned the soil once over, then smoothed the same down with a harrow; and in the months of November and December they sowed wheat in drills or broadcast on the even surface and scratched it in with the harrow. Oats and barley they did not cultivate.

The Spaniards informed the distinguished voyager that they found the Indians in a state of in-

activity and ignorance. The famous sailor did not fail to observe the natives and to inquire after their peculiar habits. He tells us that their universal remedy for disease was the hot bath, called by them *Temescal.* Indeed they, wild and uncultivated as they were, were scarcely less strange in their pharmaceutical notions than some of the present day of whiter skin and of more cultivated minds, whose faith is unshaken in the belief that a *cold* water bath is a reliable catholicon or panacea.

The *temescal* was a mud or adobe oven, with an aperture at the top to let out the smoke, and a larger one at the side, in which they entered. Several persons usually entered this oven at the same time quite naked, and made up a fire close to the entrance on the inside. They added wood to the flames as long as they could bear the heat, which made them perspire profusely. They would wring their hair, and scrape their skin with a sharp piece of wood or bone, or iron hoop; then plunge suddenly into a body of cold water. They always built their *temescal* near a body of water. This custom long continued with the Indians, and is, in fact, in vogue to this day in some places. I have learned that within the last forty years they built very large temescals—some of them measuring fifty feet in diameter at the base.

Captain Vancouver, speaking further of their customs, says that the Indians came on board his

ship in a canoe of the country, which he describes as being about ten feet long, three or four feet wide, and made of rushes and dried grass of a long broad leaf. The materials were made into rolls of the length of the canoe, and in thickness about two feet, and tapering to a point at each end; and two or three of these bundles were lashed firmly together. They were conducted with a long double-bladed paddle, like those used by the Esquimaux. They were so different from the crafts made by the more skillful Indians on the north-eastern coast, that they do not deserve the name of canoe or boat, but rather that of raft. We know the etymology of the word *canoe* is of a doubtful character, but we are accustomed to apply it to a small vessel made of bark, or one neatly cut out of a log, which sits lightly on the water, and is swift in speed.

What a contrast between the rude rafts of these Indians and the elegant birch bark canoes of the Chippeways, that are so beautifully modeled, water-tight, and glide with so much grace and swiftness!

The tribe of Indians which roamed over this great valley, from San Francisco to near San Juan Bautista Mission, (known a century ago as the valley of San Bernardino,) were the Olhones or (Costanes.) Their language slightly resembled that spoken by the Mutsuns, at the Mission of San Juan Bautista, although it was by no means the same.

Much study and attention was given to the language of the latter tribe, and a grammar thereof, compiled by the Rev. Father Felipe Arroya de la Cuesta, and published in 1816. A late edition of the work was published in New York in 1861.*

It is believed that no grammar was ever compiled in the language of the Indians of California north of the Mission of San Juan Bautista; yet, the more northern languages were studied and understood by the missionaries. The Mutsun language lacked b, d, k, f, r, strong v, and y, z, x; a great part of which letters were used in the sounds of the Olhones language.

I give as follows, a specimen of a part of the language of the Olhones, in the form of the Lord's Prayer:

"Appa macréne mé saura saraahtiga elecpuhmen imragrat, sacan macréne mensaraah assueiy nouman ourun macari pireca muna ban saraathtiga poluma macréne sonhaii naltis anat macréne neena, ia annanit macréne macrecéquetr maccari noumabau macre annan, non maroté jassemper macréne in eckoué tamouniri innan tattahné, icatrarca oniet macréne equets naccaritkoun och á Jesus."

Beechey, in his visit to this coast in November, 1826, observes of the Indians: "The Olchones worship the sun, and believe in the existence of a beneficent and an evil spirit, whom they occasionally attempt to propitiate. Their ideas of a future state are very confined. When a person dies they adorn the corpse with feathers, flowers

* Father Cuesta was a Catalan. He came to California in 1810, and was a missionary at the Mission of San Juan Bautista. He died at the Mission of San Inez, in 1842.

and beads, and place with it a bow and arrows; they then extend it upon a pile of wood and burn it, amid the shouts of the spectators, who wish the soul a pleasant journey in the direction of the setting sun." He also remarks that they had some tradition in regard to their former tribes coming from the north. But I am of opinion, from all that I have been able to gather, that their traditions of any kind were very meager. He spells the name of the tribe incorrectly—with the letter "C."* They, as well as the other tribes, used the temescal; while in them would dance excessively and shout until they became hoarse. They showed but little ingenuity, except in the making of the bow and arrow, and basket-work. Their bows and arrows were of no mean character, and they used them with dexterity and great effect. They made baskets of various sizes, some of which would hold two or three bushels, and were conical in form. The material was a stout grass, and the baskets were water-proof. They were colored on the exterior darkly, usually black. They used them for cooking purposes, and as dishes to hold all their various food. Some were wide and flat, for special purposes. They made bread and broth out of acorns and seeds. They cooked their broth in their baskets, by placing hot stones in them when half filled with the prepared liquid. They made their rafts as they did in former times, as

* Beechey's Voyage to the Pacific, vol. 2, p. 78.

described by Vancouver, and sometimes would load them with half a dozen persons, but would seldom attempt to cross the bay with more than two or three on them. They were fond of fish, and caught them in great abundance with nets, made of a strong grass, hemp-like, called by them *cisca.* It grew in the region of Martinez and some other locations, but not in this valley. The men usually went naked, but in more recent times they wore a breech-cloth. The women wore a petticoat, made of rabbit-skins. They could not have lacked for food, though their variety did not equal that of a Parisian restaurant. They feasted on deer, antelope, hare, rabbit, salmon, and other fish, together with their acorns and seeds, which they made, it is said, into a rather palatable dish.

The first Indians brought to the Mission of Santa Clara were those from the valley. After the establishment of the Mission of San José, Indians were gathered from the San Joaquin, Suisun and Napa valleys, and subsequently some of those tribes were brought to the Santa Clara Mission. Those first converted to Christianity were, after the ingress of other tribes, called Christianos Viejos (old Christians). Throughout the valley, the different groups of Indians were usually distinguished by the names of the locations, respectively, of the Rancherias (Indian villages) where they principally lived. Among the several tribes which were under the guidance of San José Mission, many dialects

were spoken. It was once said by one of the priests there, that the number was not less than twenty-three. De Mofras observes that he found forty different Indians speaking each a different language at San José Mission. He further remarks, that within all the Missions of California one hundred different idioms were spoken. Nearly all of the Indians in this region, and those of Santa Cruz, were in the habit of visiting the hill in which the New Almaden Mine was first opened and worked, to obtain red paint to adorn their faces and bodies. The cinnabar is of a reddish hue, and, when moistened and rubbed, easily produces a red pigment, highly esteemed by the savages in the arrangement of their toilet. While the color of their decoration was pleasing to their eyes, its effect on their system was by no means agreeable. It salivated them—a result as mysterious and inexplicable to them as the setting of the sun. Although a little painful, they seemingly forgot their illness as they witnessed the lustre of their skin, and were as resolute in their pride of dress as the proud damsel groaning in tight corsets and tight shoes.

I have examined in vain the great work of "The Uncivilized Races of Men in All Countries of the World," by the British writer, the Rev. J. G. Wood, to find something pertaining to the Indians of California. He speaks of the Indians of the northeast and middle portions of the United States,

of the Aztecs of Mexico, of the Camanches, but circles around the brave Apaches and all of the California tribes, and with a bound he leaps from the tribe of the Mandans to the land of the Esquimaux, thence to Vancouver's Island, Alaska, Siberia, India, China, Japan, and Siam. Perhaps the kind-hearted and learned divine is of opinion that the tribes of California do not belong to the "uncivilized races of men." If so, I, in the name of our natives, thank him for the compliment.

CHAPTER V.

1778–1840.

Ancient Site of Pueblo.—Removal to the Present Site.—Different Classes of Lands in a Pueblo.—Propios, Ejidos, Dehesas, Bienes Concejiles.—Temporary Occupancy of Pueblo Lands.—Governor's Statement that Ejidos were not measured off.

The ancient town (*Pueblo Antiguo*) or former site of San José, was about a mile and a quarter north of the centre of the present city. That is, the buildings of the Pueblo were there. But the limits of the Pueblo originally embraced the present city, and extended far beyond. The first houses were erected near the little stream crossed by the first bridge on the road leading from the city to Alviso.

The winter of 1778–9 was an exceedingly wet one. The water stood nearly three feet deep in the houses of Santa Clara Mission, which stood a little east of the present ones. The new Pueblo was alike affected, as its location was on rather low ground. By 1785, the inhabitants had experienced the difficulties attendant on low marshy grounds to such a degree, that the question of being relieved therefrom became with them a serious one. They could not, at times, travel even to the Mission of Santa Clara without taking

a circuitous route of three leagues or more. They were often mired down in the attempt — not unfrequently leaving their horses to work out their own salvation from a watery death-bed. The Indians, who doubtless understood the character of the grounds better than the settlers, seized upon such occasions to commit depredations which in dry seasons were more difficult to be executed. To remedy the evil the colonists found it requisite to adopt some formal proceedings relative thereto. They therefore drew up a petition to the Governor, setting forth the facts pertaining to their situation, and soliciting permission to remove the Pueblo farther south a short distance to higher grounds. The Governor, not being vested with adequate power to make so important an order, detailed in full the subject-matter to the Comandante-General of the Intendencia, at Arispe, Sonora, by letter, on the 5th of August, 1785. The transportation of the mails in those days was attended with great delay and uncertainty. I cannot state with any degree of definiteness how much time was occupied in placing before that Comandante the foregoing communication. So far as the archives bear testimony, no definite action was taken in the matter by that distinguished officer until nearly two years thereafter. Finally, on the 21st of June, 1787, after having fully advised with the law officer of the crown (*Asesor*), he issued a decree which was transmitted to Gov-

ernor Fages, authorizing the settlers to remove to the "adjacent *loma* (little hill) selected by them as more useful and advantageous, without changing or altering, for this reason, the limits and boundaries of the territory or district assigned to said settlement and to the neighboring Mission of Santa Clara, as there is no just cause why the latter should attempt to appropriate to herself that land."

Notwithstanding this decree, the removal of the Pueblo did not take place very soon thereafter. As late as 1797, we still perceive the question of removal under discussion. Governor Borica requested Don Gabriel Moraga to inform him what means could be advised to avoid the dangers arising from high waters. Moraga replied by letter on the 8th of January of said year, saying the only means were: "To move and build houses on the other side of the river, where there is a *sitio aproposito* (an appropriate site), about two gunshots distant, in front of which are oaks, in the same plain that extends to the Mission. This *paraje*, place or site, is the property of the Pueblo and within its territory, and without any controversy in relation to its boundaries. This place possesses great advantages and security against the rising of the water, and the principal one is the facility of traveling to the Mission; although the water may be high the passing will not be inconvenient, and there will be no detention from mass or confession (which at present the people

are deprived of), and the traveling will not be disagreeable; but in weather like the present there is no alternative (although a sudden death or accident should occur), except to carry on one's shoulders the sick person; and this, with a thousand difficulties they would meet, would not be an easy task, nor one to which the reverend fathers should be exposed. These are the reasons, sir, which the inhabitants, except four individuals, have made known to me. Indeed, Ygnacio Vallejo is of the same opinion." Moraga further states the reasons for removal as laid before him by Ygnacio Vallejo to be as follows: "At the time I obtained command as Commissioner of the Pueblo, the water raised so high that a little more would have carried off our houses. Some of them were much injured, and we were deprived of going to mass and confession, not being able to pass to the Mission without going round circuitously a distance of three leagues, to avoid the bad places which were so numerous in such weather. And in the bad places many were left afoot without being able to use their horses; nor could they look after their *cavallado* (band of horses grazing), nor use them to notify each other in case of any trouble or accident. Already in the Pueblo and in the adjoining Mission, on such occasions, the wild unchristianized Indians have committed depredations. Finally, for sowing wheat, corn and other grains, the carrying of the mails, and the

passage of pack-trains, it offers great advantage, as well as for timber and wood; everything is nearer and more convenient, and I fully approve of the views of the citizens."

According to the best evidence I have discovered, the removal of the Pueblo took place in 1797. What occasioned the long delay is conjectural. It may have been that several winters passed after the first agitation of the question without producing heavy falls of rain; and yet they must have been annoyed, more or less, every year. I have not been fortunate enough to find in the archives any documents that record the particulars of the removal, nor any that show whether or not there were new or other *solar* and *suerte* lots given, and titles therefor, in accordance with the ceremony performed by the Commissioner in 1783.

I have already alluded to the fact, in Chapter III, of the apparently inexcusable neglect on the part of the officials in the proper division of the Pueblo lands, and that the failure so to do has been felt up to the present time. I partially explained the character of lands termed *ejidos* therein. As the subject of these different classes of land is, and has been, of no ordinary moment to the residents of San José and all those holding lands here, I deem it of very considerable interest to the reader to peruse the law appertaining to that classification, which I give as follows:

Suertes were the cultivable lots of land granted to *pobladores* or colonists. The regulations made by Governor Neve for California in 1779, and approved by the King, declared the *suerte* to be two hundred varas long and two hundred wide. The Spanish vara is about thirty-three and one third inches long.

The *Propios* were such lands, houses or other property as were rented, and the proceeds therefrom went into the municipal fund to assist in defraying the expenditures. Governor Gutierez, January 25th, 1836, thus defined them: "The *terrenos de propios* are lands assigned to the Ayuntamiento (Town Council), so that by leaving them to the best bidders for a term not exceeding five years, they may defray their expenses by the proceeds, and the Ayuntamiento may propose the amount of rent, mentioning it in the petition which is presented."

The *Ejidos* were the vacant suburbs. It is considered that the English word "commons" best illustrates its signification, as the words "common lands" leads one into an error concerning them. Governor Gutierez, in 1836, describing them, said: "By *ejidos* are understood lands that are immediate to, and in the circumference of, the Pueblo, which serve both for the relief and the convenience of the inhabitants, who may keep therein a few milch cows and horses for their use, to form walks and alleys which may adorn the entrance of

the place so that the *ejidos* may have a quarter or half a league around the town, which is sufficient for its ventilation, and the Ayuntamiento may dispose of these lands for building-lots (*solares*). Escriche's "Dictionary of Legislation" gives the following: "*Ejidos* is the field or land which is at the exit of the town, and can neither be planted nor cultivated, and is common to all the citizens. It comes from the Latin word *exitus*, which signifies the exit or suburbs. The *ejidos* of each Pueblo are designated for the common use of its inhabitants; consequently no one can appropriate them, nor acquire them by prescription, nor build on them, nor devise them." The Spaniards, in declaring the law of the *ejidos*, followed in the footsteps of an ancient people, for the law of the Hebrews did not permit such lands to be sold: "But the field of the suburbs of their cities may not be sold, for it is their perpetual possession."—Leviticus: xxv, 34. The word *ejidos* has often been incorrectly used and as though it embraced pasture lands. That is, as though it denoted all the common land.

The *Dehesas* were the great pasture grounds, where the large herds of the Pueblos roamed and grazed. This word has been confounded with that of *ejidos*, which is not its equivalent, as I have shown.

The term *Bienes Concejiles*, is synonymous with the English words "Town Property." The sig-

nification is given in Partida 3, title 28, law 9, as follows: "That which in respect of ownership belongs to the public or council of a city, village or town, and in respect of its use belongs to every one of its inhabitants, such as fountains, woods, the pastures, etc."

The subject of the division of the Pueblo lands into the respective classes, by distinct boundaries and monuments, and the fact of the removal of the Pueblo in 1797, from the old to the new location, present some valuable suggestions for consideration. It will be remembered that I have given in Chapter III, an account of the first grants made in the Pueblo; that the delivery of the titles and possession thereto took place in 1783, and before the removal. In the old Pueblo, the streets and house-lots were laid out, as we perceive by the first grant made of a house-lot, which was adjoining that of the Ayuntamiento, or Town Council. And yet, I have known of witnesses now living who testified that the grants of *solares* made in 1783 were near the plaza, or centre of the present city. All of the house-lots were given in close proximity to each other, as the law required, leaving an alley of ten varas between each one. If the first one given was near the house of the Ayuntamiento, a mile and a quarter north of the center of the present city, or from the plaza, how is it possible now to locate the grants of 1783 near the Catholic church, or the

plaza? That the old Pueblo was some distance north of the centre of the plaza of the present Pueblo, there is no doubt; that it was removed there is no question. The archives are full of the expression "Pueblo Viejo" (Old Pueblo). Nor can it be doubted that the removal was subsequent to 1783, because the archives testify that no permission to remove it was asked for until 1785.

The removal was made by order of the Comandante-General of the Intendencia—four Provinces of the West, second only in power to the Viceroy. His authority cannot be disputed. If the *suerte* lots granted in 1783 extended to the centre of the present city, the removal of the Pueblo to its present site would have annulled them. *Suertes* could not exist within the *ejidos* designated for house-lots. There could not have been much of a town without houses. Under the regulations for California of 1779, it was the duty of the Government to mark the house-lots, streets, and the other classes of Pueblo lands. It cannot be argued with any plausibility that the Government had no right to take the *suertes* from public use after having once given them to individuals. The Government would have such power under the doctrine of *the right of eminent domain.* The above-mentioned regulations contain the following: "The house-lots to be granted to the new *pobladores* (settlers) are to be designated by Government in the

situations, and of the extent corresponding to the locality in which the new Pueblos are to be established, so that the square and streets be formed agreeably to the provisions of the laws of the kingdom; and conformable to the same, competent common lands shall be designated for the Pueblo, and pasture grounds with the sowing lands that may be necessary for municipal purposes."

When the Pueblo was removed, did the officers do their duty or not? If they did, could there have been any *suertes* very near the plaza? Evidence has been given in our several Courts that various *suertes* were located within thirty or forty rods of the plaza, and even within a less distance. Attention has been called to the fact that the Romano premises near Market and Julian streets, and some other premises, were long possessed by the occupants, as is evidenced by the old fruit trees. It was not the intention nor the custom to build houses on the *suertes.* House-lots were given expressly for residences, and, in fact, it was against the will of the Government that the settlers should build on the *suertes.* I have above cited the law, which declares that the house-lots to be granted are *to be designated by Government.* Further, the records or archives show no other *suerte* grants except those to the first settlers. There might have been others; but there was a condition attached to each, which was to be signed by the grantee, and if he refused to sign he could not obtain the grant. The main evidence given in the

suerte claims has been in relation to their possession. Under the Spanish and Mexican law that did not seem to avail the occupants, as the law expressly declares that the *ejidos* cannot be held or gained by *prescription.* I am of opinion that a great many lots were occupied for cultivation temporarily, and without any title whatever. Salvio Pacheco so testified in the case of *The United States* vs. *The Mayor and Common Council of the City of San Jose* (U. S. District Court).

Although the *ejidos* were not designated by lasting monuments, yet we can hardly believe they were not originally marked out. The marks were long ago doubtless effaced. We cannot think that the Government officers were so derelict in duty as not to have designated some land for building lots, to meet the increasing demands of the inhabitants as the town advanced in growth. I find that the Governor's message addressed to the Departmental Assembly in session at Monterey, February 16th, 1840, shows the fact that no town, except Monterey, had its *ejidos* and *propios* marked out; and in speaking of the matter, his Excellency observed: "For which reason the Government, on making concessions of land in the vicinity thereof, granted the same temporarily, waiting for such regulation."

I have not intended herein to express any legal opinion on *suerte* claims; such would be foreign to my purpose; but the suggestions I have advanced I deem not a departure from my true course.

CHAPTER VI.

1797–1801.

Dispute as to the Boundary Line between the Pueblo of San José and Mission of Santa Clara.—Letters in Relation thereto from Governors, Missionaries, Military Officers, and the Viceroy.—Guadalupe River Declared to be the Boundary.—Juzgado.

NOTWITHSTANDING the extensive tracts of uncultivated land, their comparatively little value per acre, and the readiness of Government to donate its domain to the settler, there was exhibited a tenacity of feeling in the desire for territorial possessions akin to that lofty pride of owning "cattle upon a thousand hills." The settlers within the limits of the Pueblo and the Fathers of the Mission of Santa Clara did not live in that harmony in regard to the boundaries of their respective domains as was conducive to an entirely peaceful life, or to the truest advancement of their mutual interests. A long and continuous dispute relative thereto existed through a decade of years. The Fathers were, indeed, jealous of their rights, and many were their complaints; not that they were individually concerned, but in view of the fact that the number of Indians under their charge was large, and that their wants were correspondingly as great. In consideration of these facts, they were of opinion that their borders needed an

extension rather than a diminution. Their petitions did not contain, in their judgment, solicitations for additional expanse, but the moderate demands to be left in the quiet possession of their prior rightfully-possessed estate. As the Mission settlement had precedence in point of time to that of the Pueblo, the good Fathers were not impressed with the idea that they ought passively to witness encroachments within their precincts. Their importunities were really in the name of the poor Indians, whose rights were at hazard rather than their own. Whether their complaints were justly founded is not for the historian to weigh in the balance, but to narrate the facts.

Friar Francisco Miguel Sanchez, Minister of the Mission of Santa Clara, addressed the Governor of the Province, Don Diego de Borico, by letter dated April 30th, 1797, upon the question of the disputed boundary, wherein he relates that on the 12th of December, of the last year, the arrival of the engineer was expected, who would come with a view of examining the boundary line between that Mission and the Pueblo of San José; and supposing that the engineer was in San Francisco, the Friar asked the Governor to order him forthwith to proceed to make such examination. He solicited him to deliver to the engineer the plan and copy of the boundaries which had been forwarded to his Excellency by some citizens of the Pueblo. The Friar suggested to the Governor that

the said plan and description would show that he had been erroneously informed upon the matter; that after a fair examination and explanation of the landmarks, all parties might be satisfied, and that the whole proceedings being reduced to writing would, in all probability, avoid thereafter lawsuits and dissensions. On the 11th of May following, the Governor issued an order directing the foregoing communication to be transmitted to Don Alberto de Cordova, Engineer Extraordinary, in order that he might, upon his return from the Presidio of San Francisco, determine the said disputed boundary. The Engineer was directed to hear the statements of the Reverend Father of the Mission, as well as those of the Alcalde, Regidores (Councilmen), and residents of the Pueblo. But, says the Governor, "always keeping in view as a guide in the measurement and boundary, the last acts of the late Lieut. Don José Moraga, in which it appears were designated the lands which were assigned to said Pueblo for house-lots, for cultivation and for *propios;* it being remembered that the measurements are to be understood from the ancient Pueblo whence they were made, and not from the land which is now occupied, as it was thus determined by superior authority. This operation being executed, the landmarks will be designated, which must be immediately placed by the residents of the Pueblo. After which the necessary proceedings (meaning writings) corres-

ponding thereto will be had. The Reverend Fathers will sign the same on behalf of the Indians, and the Alcalde and Regidores will also sign on the part of the Pueblo."

It would seem that such an order might have been executed within a short period of time, and thus ended the contention. The sequel will prove otherwise.

Pursuant to the order of the Governor, Don Alberto proceeded to establish the foregoing boundary line, but was not entirely successful; that is, to the satisfaction of the Reverend Fathers. On the 7th of the following August, he reported to the Governor what he had done in the premises. He set forth that from the acts of Don José Moraga he had learned but little; that Moraga had measured the line 1,958 varas from the old *presa* (dam) of the river up to the *mojonera* (landmark); that he, Alberto, went with the citizens, the Commissioner and the Reverend Fathers Sanchez and Viader, to the place at which they said the old dam was situated, which was in front of the old Pueblo; that he measured the distance as far as the landmark, and compared it with that made by Moraga; that the only landmark he found was one in the *potrero* of the Mission (a place where the horses and other tame stock were placed, and is on the Stockton rancho). Don Alberto, finding no other marks, inquired of the citizens present what was the course of the

line formerly run by Moraga, and how it was designated. They replied that Moraga pointed with his hand in the directions which the line ought to run, and that they were the same as those designated on the plan which they had with them, it being the same one which had been sent to the Governor. The citizens then present were Manuel Gonzales, Tiburcio Vasquez, Ygnacio Archuleta and Manuel Amesquita—and who were among the founders of the Pueblo. This examination took place on the 29th of July, at which time the foregoing persons were all separately questioned as to their understanding of the matter. Being asked if the landmark which was placed at the time the line was run by Moraga, was the same as the one which now exists, they answered yes. And being further asked if the directions of the lines were the same as those laid down on the accompanying map or plan; that is, the one north, five degrees northeast, and the other south, southwest, they answered yes. Don Alberto further reported that the Reverend Fathers' views conflicted with those of the settlers of the Pueblo, and that they had made a report of the proceedings to the Governor, which he, Alberto, transmitted with his own, together with the plan made by Moraga and the depositions of the witnesses. Finally, Don Alberto closes his report by observing that it was impossible for him to make any better explanation of the matter than

he had, for the reason he had no data to govern him in relation to the directions of the lines, save the conflicting declarations of the respective parties. Fathers Magin, Catala and Viader, made a very lengthy report, bearing date August 6th, which commences in rather a novel manner by the exclamation of "*Viva Jesus!*" In the ordinary way of translating that phrase it would be Anglicised by the expression "Hurrah for Jesus!" or, "Long Live Jesus!" In either mode of translation it would appear to one whose vernacular is English, as very peculiar, to say the least, and bearing on profanity. But coming from the Fathers we, of course, could attribute no such signification to the term; but, on the contrary, one of an opposite import. In fact, they intend to say that they speak in the name of Christianity, as they call on our Saviour to witness their declaration.

The Fathers refer to the fact of the Engineer having gone to the premises by order of his Excellency, to survey the boundary. They then proceed: "We assist in this operation and proceeding not as those having any authority to grant, or deny, or impede the possession of lands; but only as ministers who are charged with the education of the Indians, and consequently with the task of collecting them from idleness and congregating them in rational and Christian societies, as has been done, procuring at the same time

their best mode of subsistence. In consideration of this, and with this end alone, the King, our sovereign, has declared it to be his will that all the land that may be deemed necessary shall be appropriated to the natives; the right of no one being favored or allowed to prevail against this sovereign will." They inform the Governor that the Mission possesses one thousand four hundred and thirty-four Christians—more, doubtless, than many good citizens are willing to credit that Santa Clara now has. Continuing their report, the Fathers say: "If we add to them four thousand more Gentiles, which the surrounding *Rancherias* (Indian villages) contain, who will deny that all these lands will be necessary for their subsistence when it becomes requisite to distribute to each one his *suerte* as they emerge from their savage life, and will have to maintain themselves by the product of their labor?"

The Fathers declare that these are sufficient reasons why the neighboring Pueblo should not encroach on the rights of the Mission, which is against the rights of the poor Indians; and, also, that it is contrary to Law 9, Book 6, Title 3, which provides that the Indians shall not be deprived of their lands, the possession of which they have before held. They further represent to his Excellency, with all due respects to his orders, in which he requires everything to be done with the knowledge of the Reverend Fathers, that they deem it

important to make a full statement of all the facts, which they did.

They relate therein the facts of the Reverend Fathers, founders of the Mission, having established a corral, (pen for stock) and rodeos (grounds on which stock are gathered to be caught) on the other side of the river, and that the flocks of the Pueblo of San Jose, on account of their proximity destroyed the pastures; that Father Friar Tomas de la Peña applied to Lieut. Moraga, who, in consideration of the equity of the case, gave strict orders to the settlers of the Pueblo, to withdraw their flocks; at the same time reprimanding them for passing beyond the *posa* (well of water). The Fathers then exclaim, "Who would not be irritated to see that they not only have gone beyond the posa, but pretend to claim as far as the corral?"

In continuation, the Fathers observe that when the landmarks were established, it was ordered by said Moraga, that the settlers should not pass, nor cut, a certain tree, which was stripped of its branches, and which now remains. That in proof of this, it will be sufficient to cite the case of Higuerra, who came to the Fathers, and asked permission to sow for one year; which right they granted, and which he accepted. But now, they remark, the citizens not only disdain to ask permission, but claim as their own that which the Indians have already sown. That they claim the lands as far as the *Potrero*, which is a false claim;

and settlers were present when the Fathers first built their corrals on that place, and then did not claim it; and that now, after the Mission has had possession of it for twelve years, they set up their demands. That when Moraga assigned the sowing lands to the Pueblo, the settlers consulted him in relation to the extension of the same; and he replied to them that they would not be permitted to pass beyond the other side of the tree stripped of its branches; but, notwithstanding this, one Tapia persisted in sowing on the other side of the *posa;* and that Father Tomas instituted legal proceedings, and obtained judgment against him.

The Reverend Fathers remarking further, say that all these facts and others which they might present, are conclusive arguments in support of the rights which they allege in behalf of the poor Indians; "whom neither christian charity, nor the King, our Sovereign, has permitted, nor ever will permit, to be dispossessed of their lands, or despoiled of their legitimate rights, which have been ceded to them by nature, and the Supreme Being;" that while Father Tomas and his companions lived at the Mission, the settlers of the Pueblo never received a favorable audience for their petitions, although persistent; and it may have been, they observe, "because, perhaps, the Justices of the Pueblo knew very well that the said Pueblo was established contrary to the will of the King, our Sovereign, as expressed in Law 9, Title 3, Book 6,

or, perhaps, because of some respect to said Fathers." They add, if such is the case, they may find themselves under the necessity of petitioning, and even of appealing, to a superior tribunal, and to the Supreme Tribunal of the Indies; that Father Tomas still lives in the city of Mexico, and is well known in connection with the affairs of Santa Clara Mission. Finally, the detailed report is brought to an end, by revealing the opinions of the Indians themselves. They relate to the Governor that, "these natives, as well Neophites as Gentiles, have observed well all these difficulties, having known and complained that those who are called '*Gente de razon*' and citizens, have usurped their lands which God gave to their fathers." The expression, "Gente de razon," is literally *people of reason;* and signifies, by way of distinction, *civilized people.* "And lastly," says Father Catala, "I, myself, can swear that I have heard the Gentiles complain among themselves, of the manifest injustice of the settlers in desiring to appropriate to themselves lands, of which they have no right whatever; that the christian Indians note this, and speak of it publicly, is not strange; but a complaint of this character from the mouth of a Gentile, argues much inquietude, and something more."

It was apparent that the dispute relative to the boundary line, was not a question to be settled by local authorities; and that application must be

made to a more distant, and a higher, power than existed in the Province. Not exactly of as much moment as the claims of the Indian tribes, continually presenting themselves to the United States Government, but quite as protracted in settlement.

The Reverend Fathers believed they had "a friend at court;" one of no small influence, and of no low order in the ecclesiastical ranks. They sought the aid of the Reverend Father Tomas de la Peña, Guardian of the College of San Fernando, in the city of Mexico. This high ecclesiastic laid before the Viceroy a detailed representation of the proceedings which had already taken place. He pointed out the injustice, as he claimed, of the Pueblo, and solicited the Viceroy to remedy the evil. This illustrious officer surveyed the premises as presented to him, which appeared in his eye plausible indeed. He viewed the complaint as well founded in every respect; and that justice might be done in the matter, he ordered, on the 7th of August, 1778, the Governor of the Province to proceed forthwith to examine the whole affair, and, to go in person, if necessary, and view the disputed grounds. The order was accompanied by the statement made by Father Peña. The Governor was required to investigate fully all the documents in the archives of the Province, pertaining to the matter, and, to make a complete report of his acts in the premises to his Excellency, the

Viceroy. The statement made by Father Peña was a brief, historical sketch of the landed rights of the Mission and the Pueblo. He commenced by saying the Mission was founded in the beginning of the year 1777, on the plain of the river Guadalupe, at a distance of a league from its source, on its western bank, in accordance with the instructions of his Excellency, Lieut. Col. Don Juan de Anza, and the orders of the Governor of the Province of California, and is situated at the head or terminus of the arm of the sea, which runs to the southeast from the port of San Francisco, from which it is fourteen leagues distant; that during that year, Governor Neve established the Pueblo of *Gente de razon*, (civilized people), in the neighborhood of said river; and knowing it would necessarily, be of some detriment to the Mission, he, to make that detriment as little as possible, gave orders to the Lieut. Comandante of the Presidio of San Francisco, Don José Moraga, to locate the Pueblo at the greatest distance possible from said Mission; that the Governor wrote at the same time to the Reverend Fathers and founders, praying them to admit the settlers as defenders of themselves and of their Mission; and that the Pueblo should be of the least possible damage to the Mission.

Father Peña further observes that the Comandante, thinking, doubtless, to please the Governor, located the Pueblo on the opposite side from the

Mission, at a distance of three quarters of a league from the Mission house, saying that he had superior orders for so doing; that a few months thereafter the Governor visited the Presidio, Mission, and Pueblo, and said the Comandante was clearly mistaken, and that the orders he had given were only to make some ditches to concentrate the water, and not to build houses on cultivated fields; and further, the Governor promised the Fathers he would give the necessary orders to avoid all prejudice to the spiritual and temporal affairs of the Mission; that during the time Governor Neve was in office no possessions of lands were given to settlers, nor were any boundaries designated or landmarks fixed, nor did said settlers have any flocks on the Mission side of the river.

The Reverend Father Peña, still continuing his narration, states that Don Pedro Fages, having become Governor in 1782, presented himself at the Mission, saying he was going to place boundaries between the Mission and the Pueblo, in order to give, in the name of the King, possessions of lands to the residents of the Pueblo; that he summoned the Reverend Fathers of the Mission to assist, inasmuch as they had charge of the temporal affairs of the Indians; that the Fathers made a verbal protest (the summons being verbal) against said proceedings, because the same was unjust and in contravention to the laws and royal ordinances; that the Governor, regardless of reason and the

rights of the Indians, proceeded to place landmarks; that during these proceedings the Fathers sent a written protest, which they made in the name of the Indians, but the Governor not deigning to receive the same, it was forwarded to the Reverend Father Junipero Serra, President of the Missions, praying him to make such use of the same as he might deem expedient; that the Reverend Father called upon the Governor and solicited him to make some order, although it might be of an unfavorable character, as the Fathers desired to be heard in the matter; that the answer of the Governor was very succinct, and was this: "I will take care of this; if the Fathers wish to appeal to superior power, let them do so." Father Peña ironically observes: "Good consolation to few poor Missionaries in that retired and remote corner of the earth!" He adds, that from that time the Mission commenced to suffer from the inhabitants of the Pueblo and from their flocks, and which was carried to such an extent, that the annoyance to the Fathers was considered the best way of pleasing the Governor, who, far from attending to the repeated complaints of the Fathers in relation to the scandalous treatment of the unchristianized Indians by the settlers, and the bad example set by them before the neophites, who knew and saw their improper conduct with the women, besides the damages to their fields and other property, al-

ways refused to give the necessary orders for the prevention of said disorders.

Don Pedro, the Governor, would not have much admired the portrait of himself drawn by the Reverend Father—a picture which he never witnessed, as it was executed long subsequent to the close of his official career, and passed through but few hands into the archives of the country. It has long lain there among the dusty manuscripts, somewhat faded by time, and now brought forth and restored, to be presented to the living of to-day, that they may have a glance at a part of the features displayed in that long-extended territorial dispute among the ancestors of a preceding race—protracted, indeed, but not more so than the disputed rights to the same domain has been by their succeeding generations, in different tribunals and in a different tongue.

But to continue Father Peña's sketch: He alleges that in the year 1786, the Reverend Father Palou, having retired from the Mission, came empowered by the ministers of the same to ask justice at the hands of the Superior Government, bringing with him a copy of the protest and reply of the Reverend Father Serra in relation to what had passed between him and the Governor; that Father Palou presented himself before his Excellency the Viceroy, Conde Galvez, who, as well as the Fiscal (Attorney-General), promised him that the whole matter should be promptly considered;

that the latter said to Father Palou he would give the most stringent orders to the Governor, requiring him to keep strict watch over the settlers, and to punish severely any excesses or scandalous conduct; and that in relation to the injuries to the temporalities of the Mission, he would order the landmarks which had been placed by Governor Fages to be removed; and further, that the river running between the Mission and the Pueblo should be the dividing line, and thus end the difficulty. He further alleges that the serious illness and subsequent death of his Excellency Señor Conde de Galvez, and that of Father Palou soon thereafter, were the reasons why said provisions were not carried into effect; that while Don José Antonio Romen was Governor, and, afterwards, while Don José Joaquin de Arrillaga held the same office, *ad interem*, the Mission did not acknowledge such boundaries, nor did the inhabitants of the Pueblo attempt to prevent the Mission from making enclosures on the land, which, according to the boundaries fixed by Don Pedro Fages, pertained to the Pueblo; all which was sufficient to induce the settlers to believe that the said Governor would not recognize their claim, the same being evidently against the rights of the Indians.

Father Peña further observes, that it is well known with what facility lands have been obtained from the Government, for ranchos (farms) by *Gente de Razon* (civilized people), and that with

notable prejudice to the Mission; that the residents of the Pueblo of San José claim the west side of the river, under Fages' order of 1782, well knowing that protests were made in good faith in behalf of the Indians. And that, in consideration of all that has been set forth, and which the Father alleges can be proved, if so ordered, he prays that the Governor of the Province be ordered to require the settlers to no longer molest the ministers; that the Guadalupe river be made the boundary line, in accordance with the opinion of the Fiscal of the royal treasury, Don Vicente Posadas: as then the Pueblo will have more than enough land on the spacious plain, which extends in three directions; and that the Mission will be content with what remains, although it be of less amount, and of an inferior quality.

Thus ends the epistolary history, dated at the Apostolical College of San Fernando, July 27th, 1798, with the humble salute of "Kissing the hand of your Excellency," and addressed to his Excellency Señor Viceroy Don José de Aranza.

Governor Don Diego de Borica, on the 4th of September, 1798, and before he had received the order of the Viceroy, bearing date August 7th, wrote to the latter, that the ministers at the Mission had greatly overrated the number of unchristianized Indians under their charge; that many of the neighboring Indians belonged to the Mission of San José; and others of them to the

Mission of San Juan. With the foregoing letter, the Governor transmitted all of the proceedings bearing upon the disputed boundary.

On the 3d of the following December, he again wrote the Viceroy, in obedience to the said order of August 7th, which he had received on the 28th of November. He commences that epistle by saying that he will explain all that he understands in relation to the injuries suffered by the neophites at Santa Clara Mission, as represented by the Reverend Father, Guardian of the College of San Fernando, as being caused by the settlement of the Spaniards in the neighborhood. He continues by remarking that, as to the negotiations which took place, on the establishing of the Pueblo, between the Reverend Fathers ministers of the Mission, the Reverend Father Junipero Serra, President of the Missions, and the Governor's predecessors, Don Felipe de Neve, and Don Pedro Fages, he cannot explain anything; nor can he say anything in relation to the promise made by his Excellency the Conde de Galvez, and the Fiscal of the royal treasury, to the Reverend Father Francisco Palou, when he represented this matter at the capital.

The Governor further declares, that thus far during his administration, there appears to be no dispute about boundaries; nor is it strange, he adds, for the inhabitants consisting of only a few poor devils, it little matters to them what the

Mission claimed, so long as they had undisturbed possession of their lots of land. But, believing that it would be necessary to make distribution of lands to others who might be entitled thereto, as ordered by his Majesty, in the Regulations of the Peninsula; and also to appropriate some for the growth of hemp, by way of experiment, he found it requisite to take the matter in hand, in order that the Pueblo might have all that belonged to it, according to its limits, as designated at the time of its establishment, there being no order to the contrary. But it appears that the Comandante-General had made an order, marked number one, which the Governor transmitted to the Viceroy, and in which the boundaries fixed at the founding of the Pueblo were confirmed. The Governor also forwarded the proceedings which had taken place in relation to the matter, and which embraced ten documents, numbered from one to ten inclusive. He informed the Viceroy that, in his prior letter of September 4th, he had asked, in communication marked number 603, the latter to declare the limits of the Pueblo, and that he had a sketch of the land before him; and having examined it thoroughly, he did not think it necessary to go in person to the disputed grounds; but if he, the Viceroy, thought proper thus to advise, he would comply therewith, and endeavor to end the discord.

The Governor suggested to the Viceroy that he agreed with the Reverend Father-Guardian, that

the river should be designated as the boundary line; that then there would remain to the Pueblo a large portion of irrigable land, which would be required by an increased population; but that a part of the sierra, (mountains,) lying toward the coast, ought to remain to the Pueblo for a supply of timber and firewood; and that if his Excellency should so determine the boundary, that *suertes* would be given on this side of the river to three or four individuals who had them now on the other side, as these persons considered, according to the ancient time, that they were entitled to the former *suertes*.

The Governor further reported that he had examined the archives and found no representations made by missionaries in regard to the matter. He sent to the Viceroy the original instructions which governed the Commissioner in the measurement. He refers to the Fathers as witnesses in support of his prompt decisive acts, to restrain all disorder whenever notified of the same, and that he had inflicted punishment on those who deserved it; that some might possibly have escaped his notice, and, if so, it might rather be attributed to human weakness, and that he could not be in all places at the same time, than to any lack of vigilance on his part.

On further examination of the archives he found it necessary to again communicate with the Viceroy, which he did by letter of the 17th of Jan-

uary, 1799. He informed the latter that he had found private instructions given by Governor Felipe Neve to his successor, Don Pedro Fages; that article eleven thereof declared what should be the limits of the establishment. He added that, notwithstanding said instructions, he had not changed his opinion that the river should be the boundary, leaving part of the mountains for timber and firewood. The foregoing instructions are in these words: "To the end that all trouble between the Mission of Santa Clara and the Pueblo of San José may be avoided, I declare, as heretofore I have done, that the boundary between the same from east to west, shall be a line midway between the two settlements, there remaining to the Mission the part on the north, and to the Pueblo that on the south, where landmarks will be placed."

It will be remembered that the direction of Santa Clara Mission from the Pueblo is northwest. The spring or well of water spoken of in this controversy, is on the grounds owned by Capt. Cook, and about two miles from San José. Between that spot and the river Guadalupe is quite a tract of valuable land, over which had been the spirited contention.

At last, the long dispute appears to approach a finality. We find that the Viceroy, on the 1st September, 1800, sealed the fate of that issue by decreeing, in conformity with the solicitation of

the *Fiscal de Real Hacienda* (Keeper of the Royal Treasury), and the advise of the *Asesor* (Attorney-General), that in the future the river Guadalupe should be the dividing line; leaving to the Pueblo part of the mountains which lie on the coast, so that the settlers might provide themselves with timber and wood, as Don Diego de Borica, when Governor of the Province, proposed in letters of dates December 3d, 1798, and January 17th, 1800.

The Viceroy gave special instructions that the landmarks should be fixed firmly and permanently, that no future dispute could possibly arise. He considered this settlement in the nature of a compromise; that the Mission had yielded part of its rights to the mountain land.

Don José Arguello, Brevet Captain, and Commander of the Presidio of San Francisco, in compliance with the foregoing order of the Viceroy, and by virtue of having been commissioned by his Excellency Don José Joaquin de Arrillaga, Governor *ad interim*, proceeded on the 24th of July, 1801, to establish the disputed boundary. The Reverend Father Friar Francisco de Laveren, President of the Missions, cheerfully consented. The Commissioner was accompanied by Father Martin de Landoetoe (who had been selected by the President), Father José Viader; and Marcas Chabolla and Marcario Castro, the two latter as Commissioners on the part of the Pueblo. The

river Guadalupe being designated as the line, for a certain distance, and as its origin was nearer to the Pueblo than the Mission, it was agreed that a line should be drawn in the same direction as the course of the river, which varied a little from southeast and northwest. They then further agreed to construct immediately three landmarks of stone, in a permanent manner, placing the last one on a little stony hill at the foot of the mountains, which is called Parage de los Capitancillos (place of the little Captains), leaving to the Pueblo a part of the *roblars* (oaks) for wood, and also all the *sausal* (wet land covered with willows,) which surround the head of the Guadalupe river. After this part of the work was finished, a part of the mountains on the coast range was marked off for the Mission, in order that both establishments might be supplied with timber and firewood; fixing there land-marks also. The proceedings were drawn up in writing, and signed by all the parties present. Captain Arguello made an official report of the foregoing measurements, on the 31st of the same month, to Don Raymond Carrillo, at Monterey. The latter likewise communicated the facts to the Governor, on the 1st of the following August, remarking that it became his (Carrillo's) duty to direct the proper order to the justices of the Pueblo, to prevent further disturbances between the citizens thereof and the natives at the Mission; and to notify them that in case the inhabitants

should suffer injuries from the Indians, to inform him and the Reverend Fathers, and not attempt to take it upon themselves to correct the evil.

Thus terminates a prolonged and vexatious debate upon territorial rights, maintained with equal vigor on both sides; although not as threatening in its aspect as the dispute on the northwest boundary between the United States and British America, which caused every citizen of the Republic to shout the ultimatum of "Fifty-four forty or fight." Though less dangerous in a military point of view, not less warlike in words, sent forth principally in epistolary form.

After all this correspondence, it may puzzle the reader to decide which side of the controversy had the stronger claim to the land lying between the *posa* and the river. Three quarters of a century has nearly elapsed since the question was finally put at rest, and as death and time equalize all things, the kind reader may conclude that the testimony equally balanced the scales.

In 1798, the house of the Ayuntamiento or Juzgado was built, which existed until the year 1850, when it was pulled down. Whether any improvement was made subsequent to its original structure is not positively ascertained by the archives. I have learned from an eye-witness, that as far back as 1818, it stood as in 1850. This was an adobe building, situated on Market street, a little west of the store now occupied by Mr. Lion, at

the corner of El Dorado street. The gable ends were facing east and west. It was one story high, and had three rooms. The middle room was occupied by the Court, the east one as the Alcalde's room, and the west one as the jail. This building is a little suggestive as to the location of titles. The titles given in 1783, a mile north of Market square, called for the house of the Ayuntamiento as a boundary to some lots then granted. Of course, the titles alluded to the house of the Ayuntamiento in the old settlement of the Pueblo: But witnesses in our Courts within the last few years, have testified that the house built for the Ayuntamiento in 1798, was the one referred to in the said titles. The reader can estimate the value of such testimony.

CHAPTER VII.

1799–1809.

The Alameda.—Mission and Pueblo of San José—Land Dispute about La Calera.—First Church in San José —Ceremony in Laying its Corner-stone, 1803.—Peach Brandy.—Dispute about the Land called Las Calaveras; its Location; why so named.—Boundary of Pueblo by Mariano Castro.—Schools.

One of the lasting and most valuable improvements left us by the good Fathers, both pleasing to the eye and refreshing to the body of the traveler, is the beautiful grove of willows that link the Pueblo with the Mission of Santa Clara. They stand like silent sentinels, inclining their graceful forms toward each other, and entwining their leafy branches in token of eternal friendship. They stand, too, as monuments over the grave of the buried land-dispute, warmly debated, over the land that now feeds their succulent roots, and gives freshness and verdure to their shady leaves. Could they but speak, what mighty volumes of thought would they not express! Thoughts which they have gathered for nearly three quarters of a century from the passers-by, whom they have kindly sheltered from the burning sun. They have listened to the weary traveler who has halted for rest beneath their shade, fatigued by irksome march—faint from hunger, weak from age, who in

his despondency has held converse with himself over the darkness of the past, mingled with hopes for the future; who was wondering when the light from the sun of fortune would come streaming above the horizon of his life. They have listened to the penitent, who was winding his way to the confessional, with the anxious hope that he might be relieved of the heavy burden that weighed down his soul.

They have listened to the lover's voice, that came with a sweet, though trembling accent, from the very depths of a noble heart. They have listened to the merry laugh, that burst forth with a childish innocence, from the gay and cheerful heart, seemingly unacquainted with grief. They have listened to the slow and solemn tread of horse and foot, arrayed in funeral pomp, timing the muffled drum, and the blast of the bugle-horn, that breathed in measured accents the notes of the dead march—a march that has carried to the tomb those whose wild shouts of joy had often resounded amid their wavy boughs. And they may stand until all who now breathe in the valley which they adorn, shall have taken up their abode in the silent grave. It was in 1799, the midnight year of the last century, that Father Maguin de Catala, performed the goodly work of starting this enchanting grove. He employed two hundred Indians to plant, water, and protect the trees until they had received sufficient strength to withstand the nibblings and

gnawings which the cattle might chance to give them. The grove formerly extended easterly as far as the Guadalupe river. They were, indeed, of much value to the passing footmen, as a protection against the assaults of wild cattle that literally covered the plains, and which seemed contented to let man alone while he was mounted on his steed, but if afoot, it would have been almost a miracle if he had succeeded in going any great distance without their making advances to give him a lofty tumble on their horns.

On the north and eastern side of the grove of trees, an *acequia* (ditch) extended from the Guadalupe westerly, thence northerly, following the road, to the Mission, passing the western confines of the garden thereof; thence running northerly, and circling toward the east, a distance of nearly three miles, until it again united with the Guadalupe. This ditch was for the purpose of irrigating the land. This road through the Alameda was the best and most important in the county. San José was not an ecclesiastical parish until 1851, when it was so ordered by Bishop Allemany. Previous to that time, there was no regular service in San José, and, therefore, nearly all baptisms, marriages, and burials took place at the Mission. Hence the importance of a good road to the Mission.

The Mission of San José was established in the year 1797, on the 11th of June, about twelve miles

northeast of the Pueblo of San José. Of this Mission, I shall have more to say hereafter. I now mention the date of its founding, as our attention is called to some matters which connect that establishment with the Pueblo lands. We have now turned our face a quadrant to the right, to witness another land dispute, shorter in duration, less in magnitude than the one just closed. The Mission and the Pueblo discussed the claim to doubtful territory.

It appears that the place known as La Calera (the Limekiln) was in dispute between the Mission and the Pueblo. The Government had given the use of a rancho there to José Ma. Larios and one Ballesteros. Larios sold the place to the Mission, which made the Governor highly indignant, and likewise the inhabitants of the Pueblo. The latter claimed the land as being within the Pueblo limits, alleging also, that the Mission could not possess the same by an illegal sale. The Commissioner of the Pueblo wrote Governor Arrillaga, on the 3d of July, 1803, informing him of the illegal sale, sending therewith documents showing that the late Governor had given the parties possessing said land, only a permission to use the same. The Governor, on the 16th of the following August, officially communicated with Don José de la Guerra in relation to the matter, wherein he stated that he approved of the acts of the latter in suspending the delivery of the possession of the premises

until he, the Governor, should determine the question of title. He further observed that the Fathers of the Mission of San José had applied to him regarding the same, and that he had replied to them by letter, a copy of which he thereby transmitted to De la Guerra. He added that Larios had no right to sell the tract of land; that lands which were given, loaned or rented, could not be sold by the possessor without permission of the Government; that such were the orders even where they acknowledged the domain to be in the party; and that when the deceased Governor ordered the Commissioner of the Pueblo to deliver possession of the said premises to Larios and Ballesteros, he did not recognize the same as belonging to the said Mission. In view of the foregoing reasons, and the fact that Larios acted in bad faith, the Governor ordered that De la Guerra should inflict upon Larios the punishment which he merited; adding, that Larios' acts had given grounds for complaint on the part of both the Pueblo and Mission. If all the parties were punished in the present times who act in bad faith in land transactions, the criminal courts would be more industrious than they have been thus far.

The Governor wrote the Fathers of the Mission upon the subject, August 19th, referring to the fact of the sale by Larios, and of his receiving compensation for the house he had built thereon,

observing, at the same time, that he could not approve of the act; that Larios had no right to sell without a permission from the Government; and further, that the Pueblo, through the Alcalde, had solicited the same place, as it had always been recognized as being within the confines of the Pueblo.

The history of Spain has not failed to show that the predominant idea of every sovereign ever seated on her throne, has been the advancement of the Catholic faith. That faith has been a part of the machinery of government; and the erection of cathedral, church or chapel has not been left entirely to the will of her subjects, but considered as a portion of Governmental functions. The same spirit has permeated throughout every hamlet in Spanish domain. In 1803, the inhabitants of the Pueblo, remembering that the land between them and the Mission of Santa Clara was subject to overflow—and so much so as to have caused a removal of their Pueblo settlement—deemed it advisable and convenient to have a small church or chapel within their own precinct, where, as favored with a priest by the kindness of the Mission Fathers, they might bow down and worship their faith within a stone's throw of their own mansions.

About the first of July, the Commissioner of the Pueblo, Don Macario Castro, wrote Don José de la Guerra, Comandante at San Carlos, near

Monterey, soliciting him to come to San José to act as godfather at the consecration of the corner-stone of the chapel about to be erected here. That modest man replied by letter, July 7th, that his daily acts of impiety would not permit him to accept the favored position, but that, using the faculties that had been conceded to him, to nominate a substitute which would be agreeable to his taste, and one in whom he had confidence, he had empowered Don José Ma. Estudillo, a cadet, who would do all that he himself could.

On the twelfth of that month the ceremony took place, on the ground near where the Catholic brick church now stands. Several pieces of coined money, made in the reign of the different Spanish monarchs were placed under the corner-stone, and a brief statement of the proceedings were placed in a sealed bottle, to perpetuate the memory thereof, as will be seen by a translated copy of those proceedings, which reads as follows: "In the Pueblo of San Josè de Guadalupe, the 12th day of July, 1803, Señor Don Carlos IV., being King of Spain, Don José Joaquin de Arrillaga, Governor *ad interim*, and Lieut. Col. of the Royal Army; the retired Sergeant Macario de Castro, Commissioner of the Pueblo; Ignacio Archuletta, ordinary Alcalde; and Bernado Heridia and Francisco Gonzalez, Regidores; at six o'clock of the evening on said day, was made the consecration of the first stone and mortar of the church which was com-

menced in the said Pueblo, dedicated to the Patriarch Señor St. Joseph, and the Virgin Guadalupe; which ceremony was celebrated with much solemnity by the Reverend Father Friar, José Viader, minister of the Santa Clara Mission; Don José Maria Estudillo, Cadet, acting as godfather, by proxy, from Alferez de José Antonio de la Guerra y Noriega, Commandant at the Presidio of Monterey, and who placed under the first stone, moneys of every sovereign, and a duplicate of this document, in a bottle sealed with wax, for its preservation in the future; and for the present, we sign it in the said Pueblo, the day, month and year aforesaid. FR. JOSE VIADER.

"JOSE MARIA ESTUDILLO, as proxy for Alferez de la Guerra y Noriega.

"MACARIO DE CASTRO, Commissioner."

Notwithstanding the modesty of the gallant commander, as to his conscientious scruples, nevertheless he was represented in fact, his appointee acting as his agent. It was a gentle and polite manner of relieving himself of the performance of a solemn duty. Proxies in warfare, and in the performance of articles of faith, are convenient luxuries.

The little chapel built over all that ceremony, remained until 1835. It was made of adobes, but covered with a tule (coarse grass) roof. A few pictures of Saints, and of Biblical scenes adorned the rude structure. Rude though it was, I do

not doubt that the hearts which gathered within it, were as humble and penitent as those who kneel beneath spacious domes, gemmed with precious stones of every hue.

Scarcely had a half dozen years elapsed subsequent to the establishment of the settlement of the Pueblo on its present site, when the inhabitants were enjoying the benefits of luxurious fruits. They saw, as we see now, a fertile plain bringing forth with a wonderful rapidity, every class of vegetable form which man saw proper to cultivate. The very plants themselves seemed to vie with each other in expansive growth, as they drew moisture from the earth, and light and heat from the sun. And as the harvest of fruit was greater than its consumption, in its natural state, the owners thereof sought to transubstantiate a part of it into a pleasant, though intoxicating beverage. Yet, before that could be done, the King's officer must be consulted, one whose vigilance was not less watchful than the all-important and prying revenue officer of this free Republic, who considers it his duty to watch the *stamp* of a schoolmarm's foot to unruly scholars, that he may know whether it is of the right size. One innocent and law-abiding subject of the King, residing in San José, Don Manuel Higuerra, had more peaches than he cared about eating in the ordinary way. He came to the opinion that peach brandy was a useful article, at least, at stated periods. Knowing the

law on the subject, he acted cautiously, and wound his way to the capital of the Province, Monterey. He there obsequiously solicited the favor of making just one barrel of that good, old never-to-be-forgotten drink, peach brandy. The officer, doubtless, sympathizing with the taste of the petitioner, granted the favor, and delivered him the following certificate, as a protection, which was to be filed in the archives of the Pueblo, in the Alcalde's office:

"The individual, Manuel Higuerra, has permission to make as much as one barrel of peach brandy. NORIEGA.

"Monterey, 19th day of August, 1805."

There is a tract of land in the hills near the Mission of San José known as the *Calaveras* (Skulls). It derived its name from the numerous skulls found there. There had been several skirmishes with the Indians in that vicinity, and some that entered the fights were not successful in attempting to get away with their bones, as these old skulls well testify. The land, like the skulls that christened it, had its proprietorship left in a state of doubt. The spirits that once had actual and legal possession of those skulls never appeared, subsequent to their first exit, to contest their claims thereto, at least, so far as the archives show. But other skulls of the Pueblo and of the Mission did—skulls that flourished but a brief period and then took up their abode beneath the surface of

adjacent lands, the possession of which has since been hotly contested, without regard to the buried inmates.

The Mission of Santa Clara had placed their stock upon the Calaveras tract, and their right so to do was questioned by the Pueblo. The Commissioner of San José, Sergeant Don Luis Peralta, officially communicated the fact to the commanding officer at Monterey, Don José M. Estudillo, on the 22d of August, 1809. The latter referred the same to the Governor by letter, on the 20th of the following September. He informed his Excellency that he was unacquainted with the location known as the Calaveras, and that he had replied to Sergeant Peralta, a copy of which reply he therewith transmitted. He further states that Peralta, in company with the Alcalde of the Pueblo, had examined the disputed land, *Sitos de las Calaveras*, and found that it belonged to the Pueblo. Estudillo also forwarded to the Governor a statement, marked number one, received from Peralta in the foregoing letter of August 22d. He concludes his letter by requiring the Governor to inform him what ought to be done in the premises, and also to answer Peralta. The Sergeant, in his letter marked exhibit number one, states that the citizens of the Pueblo have complained to him that the Mission of Santa Clara had placed their cattle and horses on the Calaveras, which belongs to the Pueblo; and that he

being ignorant of the line that divides the Mission of San José from the Pueblo, and not finding any documents in the archives explanatory of the matter, he had inquired of most of the people in the Pueblo, and that they could give no accurate information about it. His opinion was, he said, that the land did not belong to the Mission of Santa Clara, but it might, perhaps, belong to the Mission of San José. The people of the Pueblo, believing it belonged to them, he observed, placed their stock there, as they had also done on the Larios rancho, from fear that the other pasture of the Pueblo was insufficient to keep them from dying. The inhabitants of the Pueblo further represented, that when the wheat harvest was over they wished to send their oxen and tame horses to the Calaveras; that the Mission people had been in the habit of driving away from there the stock which belonged to the Pueblo, which was a great inconvenience, inasmuch as it caused them to stray into the mountains, and frequently to become lost; and that they wished the Mission people immediately to cease occupying the same. Some of the citizens of the Pueblo placed their stock on the Mission side of the stream, but removed them on account of the complaint of the Fathers, and brought them to the Calaveras; but Sergeant Peralta ordered them not to do so for a while, until Estudillo had decided upon their right to that place. The Sergeant was quite soli-

citous in urging Estudillo to decide where the dividing line between the Mission and Pueblo of San José should run, observing at the same time that if the Calaveras really belonged to the Pueblo it would be a great convenience to the citizens.

Estudillo, in his reply to Peralta, on the 15th September, referred to above, stated that in the year 1806, Governor Arrillaga, being in company with Sergeant Macario de Castro, and the Alcalde of the Pueblo, (whose name he did not know), for the purpose of settling the boundary line dispute between the citizens of San José Pueblo, and the Mission of that name, designated as the said line, a hill which lies to the south of the rancho, that belonged to José Larios. Estudillo further stated that he recollected the fact, that the Fathers proceeded to make a ditch from this point on said hill to the first small creek (estero), but, inasmuch as Peralta did not inform him whether this place of the Calaveras was connected with this hill, or attached to what was known as the Rancho de Larios, Estudillo said he could not decide to whom the Calaveras did belong. He requested Peralta, at the first opportunity, to give him further information on that point.

Don Mariano Castro, Alcalde of the Pueblo, made a report, setting forth the boundaries of the Pueblo, as follows: "Running from the Calera, (Limekiln), distant two and a half leagues north-

erly to the esteros; southeast as far as *Las Llagas*, a distance of about ten leagues from the settlement of the Pueblo. On the southwest is the Mission of Santa Clara, the boundary between the two being La punta de los Capitancillos (Place of the Little Captains), this being the name of the place, from a little stony hill, as far as the foot of the mountain, running along the coast of Santa Cruz, at a distance of four leagues, from which springs two arroyos (streams), which flow in wet seasons, and which form the source of the river Guadalupe, that runs within a distance of five hundred yards of the Pueblo, and serves as a dividing line from the Mission of Santa Clara; the said source is about one league distant in a southwest direction, and which place is covered with woods. At a distance of a quarter of a league, is the place from which water is taken by the inhabitants of the Pueblo, for purposes of irrigation, whose lands lie upon the banks of said river, at a distance of about one and a quarter leagues. This tract of land contains groves in the low grounds, named *Aguage* (spring), which forms a creek, that runs in wet seasons, and with the other two, into the bay of San Francisco. The mountains on the east run from north to south, the lowest part of which belongs to the Mission of San José, where there is a gap in the low hills forming a cañon, from which is distant more than two and a half leagues the dividing line of the Mission; and

the distance to the stream of Las Llagas, is about the same. This arroyo becomes dry; but in the wet seasons, it waters the lands, and good crops are raised. The cattle resort to this spot for water—there being water along the skirts of the mountain, at the foot of which are found large groves of oaks; and in the place called *Tocaya* (namesake), there is another, about a league in extent. There are also watering places on the dividing lines; and, at the Punto de los Capitancillos, there is a large live-oak grove, which extends unbroken to the lands of Santa Clara. Between said boundary lines and the little stony hills, very near the Pueblo, there is another small oak grove, called *El Ranchito* (The Little Ranch). Within this extent of territory, much of the land is not susceptible of irrigation; and that which is the most so, and the best, is the *sausal*, (wet willow lands), which is watered by the arroyo de Aguage, on the edge of said groves. About the head of the river Guadalupe, on the edge of the grove, there are six suertes of land; and at the distance of four and a half leagues, the dried-up pond indicates where there are ten suertes of land."

Such is the statement of an old resident of the Pueblo, who died at the advanced age of seventy-three, in the year 1857. It is, indeed, somewhat vague, but I give it because it is from an old resident, as forming a part of the record of the

Pueblo, and, as likewise illustrating the indefiniteness of every transaction that pertained to land titles.

The document bears no date, but evidently was made many years ago. The want of exactness in the description of the lands in this State, has been no small source of the difficulties which have been presented to Courts and Surveyors, in locating the various claims. And complaints have been made by parties, seemingly, wholly ignorant of the cause of error.

At exactly what period of time the officials of this country paid any attention to the intellectual culture of the growing children of the Pueblo of San José, I am unable to ascertain. The archives of California are arranged in volumes, but without the slightest regard to chronology, or subject matter. It is, therefore, in searching for any given fact, not unlike in uncertainty to the seeking for a needle in a hay-mow. I know the comparison is a trite one, but it is illustrative of the idea to be conveyed. A document has been found among the archives of the Pueblo, pertaining to the schooling of the children in the year 1811. It appears that a contract was entered into between the Commissioner of the Pueblo on behalf of the families thereof, and one Rafael Villavicencio as teacher, for the instruction of all the children of the Pueblo. It was transmitted to the commander at Monterey for his approval. He,

not considering the document complete as to the conditions therein set forth, made the following reply to the Commissioner of the Pueblo: "I return to you, that the same may be placed in the archives, the obligation which the inhabitants of the neighborhood have made with the infirm corporal, Rafael Villavicencio, who transmitted it to me by official letter of the 30th of last September, in which he obligated himself to teach the children of this Pueblo and vicinity, to read, write, and the Doctrine; and to be paid therefor at the rate of eighteen reales per annum, by every head of a family, in grain or flour. As in this obligation of both parties, the conditions are not expressed, which I consider ought to be, I have thought proper to dictate them; that you may make it known to both parties in public, with their consent; and that it be signed by you, the Alcalde, Regidores, and the teacher, and registered in the archives.

"Firstly.—The pay of eighteen reales annually by each and every head of a family, I think is quite sufficient for the teacher; and as it is all they can give, in virtue of which, the Commissioner will be obliged to collect the same at the proper time, in order to deliver it to the teacher. The teacher, in virtue of the pay which is to be made to him, will also be obliged to perform his obligation with the greatest vigilance and strictness, without giving his attention to anything else but the teach-

ing. As the hours are not expressed in which the attendance of the children ought to be at school, they will be these: six in a day; three in the morning, and three in the afternoon; in the morning from eight o'clock until eleven, and in the afternoon from two until five; it being the duty of the Commissioner to compel the fathers to make their children attend; and to see that the teacher in no instance fails.

"Every Thursday and Saturday afternoons, the children will not write or read, but explanations will be given them these two afternoons, of the doctrine (faith), at which times the Commissioner will attend, and advise the teacher that he must answer for the little or much explanation which he may make.

"When the teacher observes the absence of any of the scholars at the school, he will notify their fathers, who will give some satisfactory reason why they were absent on that morning or afternoon; and if they should be absent a second time, then he will notify the Commissioner, who will compel the fathers to send their children, without receiving any excuse or pretexts, particularly from the mothers, because they will all be frivolous, since the children have sufficient time to do all that they are required to do.

"Lastly, during the time in which the children are at school, their fathers will be exempt from being responsible to God for them, and the teacher will

be the one who is thus responsible ; as he will, also, in consideration of his pay, be responsible for the education and teaching of the holy dogmas of the religion ; and the teacher is he who must be responsible to God, the parish priest, and to their authority. It is also understood that the fathers are obliged to examine their children at home, as to the advancement which they may make, and to complain to the Commissioner when they see no advancement, in order that he may remedy the matter, if necessary.

"As the teacher is responsible in the Divine presence for the education and good examples of his scholars, and as he must answer to the State for the fulfilment of his obligations, he has the right to correct and punish his scholars with advice, warning, and lashes, in case of necessity; and particularly he ought to do it for any failure to learn the doctrine, for which he ought not to accept any excuse, nor to pardon any one from punishment who fails to learn it, or who does not commit to memory the lesson which may be given him.

"Having made known that it should be registered as I command; God preserve you many years.

"José Ma. Estudillo."

This is, indeed, somewhat singular in its phraseology. Estudillo doubtless was impressed with the magnitude of his own power. Whether he believed that he had received all the powers he exercised

from his imperial master, the King, I know not; or whether he fancied that he had received them from Divine inspiration. But, he was either unmindful of his language, or conceived that his powers were greater than the earthly head of the Roman Church. He declares who is responsible to God, and who is not. His document is suggestive that, had he been one of the pupils of the infirm corporal, that the task of drilling him properly in the faith would not have been one of ease.

The document is likewise suggestive to any Spanish scholar, that the writer of it was badly in need of an instructor in the art of grammar, and the rules of rhetoric. As a copy of the original was deposited beneath the corner-stone of the State Normal School building, generations, centuries hereafter, may, by the crumbling of the walls of that stately pile, or by the resurrection of its foundation by some terrible earthquake, have presented them this copy, to puzzle their brains over the signification of its context, and, when ascertained, wonder at mortal power in the nineteenth century.

CHAPTER VIII.

1812–1813.

Laws of 1812–1813, pertaining to Pueblos.

On the 23d of May, 1812, the Spanish Cortes passed a decree, touching the formation of constitutional Ayuntamientos (Town Councils). After setting forth in the preamble that it was important to the welfare and tranquillity of families, and the prosperity of the nation that Ayuntamientos should be established as soon as practicable, in towns where it was proper they should be instituted, it decreed, among other things, as follows:

First.—Every town which has no Common Council, and the population of which does not amount to one thousand souls, and which, on account of the peculiar condition of its agriculture, industry, or population, requires a Common Council, it will make the same known to the Deputation of the Province, in order that by virtue of this information they may apply to the Government for the requisite permission.

Second.—Towns that do not find themselves in this situation, should be united to the Ayuntamientos to which they have hitherto belonged, as long as the improvement of their political condition shall not require other measures, uniting

those newly-formed to those nearest them in the province, or to those which have lost their jurisdiction for want of population. Section third relates to elections.

Fourth.—As it cannot fail to be proper that there should exist, between the government of the towns and their inhabitants, such proportion as is compatible with good order and its better administration, there shall be one Alcalde, two Regidores, and one Procurador-Syndico in all towns which do not have more than two hundred inhabitants; one Alcalde, four Regidores, and one Procurador in those the population of which exceeds two hundred, but does not exceed five hundred inhabitants; one Alcalde, six Regidores, and one Procurador in those which possess five hundred, but the population of which does not amount to one thousand inhabitants; two Alcaldes, eight Regidores, and two Procurador-Syndicos in towns having from one thousand to four thousand inhabitants; and the number of Regidores will be augmented to twelve in those towns which have more than four thousand inhabitants.

Fifth.—In the capitals of the Provinces there must be at least twelve Regidores, and should they possess more than ten thousand inhabitants their number will be sixteen.

It will be observed that in towns of very small population, if the peculiar condition of its agriculture, industry or population required an Ayunta-

miento, they could have one by making proper application therefor. That law has ever since been in force, except the change made as to the basis of population. The manner of organizing under it is the same. That decree was published by Rivera in 1835, as a law then in force in Mexico. Governor Figueroa stated in an official communication to Commandant Estudillo at San Francisco, January 31st, 1835, that the law of the 23d of May, 1812, providing that each Pueblo should have an Ayuntamiento, was still in force, but that as to the election of officers, the law of the 12th of June, 1830, would govern. But the change made in the amount of population defeated California in having Ayuntamientos in any of her towns. The subsequent law was passed March 20th, 1837. It required all capitals of Departments to have four thousand inhabitants, and interior towns to have eight thousand; but towns that had an Ayuntamiento previous to 1808 were entitled still to have them. Probably, San José did not have any previous to that time, as in 1840 the Governor reported to the Departmental Assembly at Monterey, that no town had the requisite number of inhabitants, as was required by the Constitution, to be entitled to one. The fundamental principles of the government of Mexico became changed after its independence from Spain.

The war of the Bonapartists against Spain had created a debt, which became an immense burden,

and every extreme was resorted to by the Spanish Government to relieve itself of the fiscal weight. A transfer of its domain to the subjects, in fee, was one course pursued. A decree of the Cortes was passed the 4th of January, 1813, pretending mainly, upon the face of its preamble, to be for the welfare of the Pueblos; but it was, in fact, issued to increase the royal revenue. The decree is as follows:

"Section 1. All vacant lands or lands belonging to the royal patrimony, and lands the revenue whereof goes to the use of the Pueblo governments *(propios y arbitrios)*, wooded or otherwise, as well in the Peninsula and adjacent islands *as in the provinces beyond the sea*, except the necessary suburbs *(ejidos* of the Pueblos), shall be reduced to private property; providing, however, that in disposing of lands the revenue whereof goes to the use of the Pueblo government, the yearly revenue derived therefrom shall be supplied by the most appropriate means to be proposed by the respective provincial deputations and approved by the Cortes.

"Sec. 2. In whatever manner these lands may be distributed, it shall be in fee-simple absolute and by metes and bounds *(acotados)*, so that their owners may inclose the same without prejudice to the various cross-roads, watering places for cattle *(abrevaderos)*, and easements *(servidumbres)*, and enjoy them freely and exclusively, and dedi-

cate them to any use and cultivation that they may think best; but they never shall entail them, nor transfer them at any time, nor under any title to be held in mortmain.

"Sec. 3. In the transfer of said lands, the residents of the Pueblos within the limits whereof said lands may be, shall be preferred, and the commoners of said Pueblos in the enjoyment of said vacant land.

"Sec. 6. Without prejudice to the foregoing provisions, one half of the vacant land and lands belonging to the royal patrimony *(realangas)* of the monarchy, except the suburbs of the Pueblos *(ejidos)*, is hereby reserved, to be in whole or in part, as may be deemed necessary, hypothecated for the payment of the national debt, preferring the payment of the claims against the nation which may be held by the citizens of the Pueblos to which the lands may belong; and, in the latter class, preferring such claims as proceed from any supplies furnished to the national armies, or war loans made by said residents since the first day of May, 1808.

"Sec. 7. In selling on account of the Pueblo's debt, said one half of the vacant land and lands belonging to the royal patrimony, or the part which may be deemed necessary to hypothecate, the citizens of the respective Pueblos shall be preferred in the purchase thereof, and the commoners in the enjoyment of the aforesaid lands; and

both shall be allowed to pay the full price of said lands with claims, duly liquidated, held by them on account of said supplies and loans, and in default thereof, with any other legitimate national claim they may hold.

"Sec. 8. There shall be comprised within said half of vacant land (baldios) and lands belonging to the royal patrimony (realengos), the portion already justly and legally sold in some of the provinces for the expenses of the present war.

"Sec. 9. Out of the remainder of the vacant lands belonging to the royal patrimony, or lands the revenue whereof goes to the use of the Pueblo governments, there shall be given gratis, one lot of the best land for cultivation to each Captain, First, or Second Lieutenant, who, on account of old age, or having become an invalid in the military service, shall have been honorably discharged from the service, be they either citizens or foreigners, provided that in the districts of their residence there should be any of this class of lands.

"Sec. 10. The lots to be granted in each Pueblo to the officers or soldiers, shall be equal in value, proportionate to the extent and quality of the same, and larger in some districts, and smaller in others, according to the circumstances of the same, and the greater or less extension of the lands; providing, however, if possible, that each lot may be such that if reasonably cultivated, it shall suffice to the support of an individual.

"Sec. 11. These lots shall be designated by the Constitutional Ayuntamientos (Common Councils) of the respective Pueblos to which the lands may belong, as soon as the interested parties present before them the documents proving their good performance in, and honorable discharge from, the service; and above all, the statements of Procurados Sindicos (District-Attorneys), shall be heard summarily and officially, without exacting fees, or reward of any kind. The proceedings shall be immediately sent to the Territorial Deputation, that it may approve it, and correct any error.

"Sec. 12. The granting of these suertes (lots) which shall be denominated patriotic rewards, shall not at present be extended to any other individual, except those now serving, or who may have served in the present war, or in the pacification of the actual revolts in some of the provinces beyond the sea. But it comprises the Captains, First and Second Lieutenants, and rank and file, who, having served in either, may have been honorably discharged, having a genuine discharge for having been disabled on the battle-field, and not otherwise.

"Sec. 13. It also comprises individuals not military, who, having served as guerrillas, or contributed in any other manner to the national defense in this war, or in the American revolts, have been, or may become, mutilated or disabled in consequence of any conflict in war.

"Sec. 14. These favors shall be granted to the aforementioned parties, though they may, on account of their services and brilliant exploits, enjoy other privileges.

"Sec. 15. Out of the remainder of the vacant land, and lands belonging to the royal patrimony, there shall be segregated those most fit for cultivation, and one lot *(suerte)* only, proportionate to the extent thereof, shall be given gratis, and by lottery, to every resident of the respective Pueblos, owning no other land, and who may apply for the same, provided the whole amount of lands so segregated and distributed shall not exceed one fourth of said vacant land, and lands belonging to the royal patrimony; and if these should not be sufficient, the lot shall be given in the lands the revenue whereof goes to the use of the Pueblo governments, imposing upon the same a redeemable tax (cañon) equivalent to the revenue derived from the same for the five years next preceding the end of the year 1817, so that the municipal funds may not decrease.

"Sec. 16. If any of those favored by the preceding sections should fail to pay said tax (cañon) for two consecutive years, if the lands belong to the class the revenue whereof goes to the use of the Pueblo governments, or if he had it for his own benefit, it shall be given to a more industrious resident, having no land of his own.

"Sec. 17. All the proceedings for these grants shall be made by the Common Councils (Ayuntamientos), without any caste, and shall in like manner be approved by the Provincial Deputations.

"Sec. 18. All lots granted in accordance with sections 9, 10, 11, 12, 15, shall be in fee-simple absolute (plena propriedad) to the grantees and their successors, upon the terms and conditions expressed in section the second; but the owners of these lots cannot dispose of them before four years have elapsed from the date of the grant; nor entail them, nor transfer them, at any time, under any title to be held in mortmain.

"Sec. 19. Any of the aforementioned grantees, or their successors, establishing upon the land granted his permanent habitation, shall be for the period of eight years exempted from the payment of any tax or impost upon said land and the product thereof.

"Sec. 20. This decree shall be circulated, not only throughout the Pueblos of the monarchy, but also throughout the national armies, it being everywhere published, so that it may come to the notice of all individuals composing the same."

We see in section 6 the exception to the *ejidos*, showing how careful the government was not in any way to encumber the *solares* or building lots.

It is further proof that suertes were not allowed to be given within the limits of the ejidos.

I have not been able to ascertain whether any proceedings were had under the foregoing decree in San José. But, as it was in force in the provinces beyond the sea, the Pueblo and the subjects here were within the purview of its provisions.

CHAPTER IX.

1814–1836.

Gilroy.—First Foreign Settler.—Livermore.—Suñol.—Commerce in Grain, Hides and Tallow.—Food.—Earthquake.—Change of Imperial to Republican Government.—William Willis.—Colonization Law.—Population, 1831.—Settlers in 1833.—Law of California Deputation, 1834.—Petition of Rancheros to Change Jurisdiction.—Revolution, 1836.—Gov. Alvarado.

The incidents of history are so few, for more than a score of years, I shall have but a small number of events to relate, until I reach that period when the influx of foreigners was so great as to change the whole aspect of this sparsely settled territory. I shall shake the sheaf of time, out of which a few grains of history may fall.

The first foreigner who came into this valley that we know anything of, was John Gilroy, a Scotchman. He landed at Monterey, in 1814, from an English ship, which belonged to the Hudson Bay Company. He had the scurvy badly, and was left on shore to be cured. He was the first permanent foreign settler in California. He soon came to this valley after he became well. San José then had only about twenty houses. Gilroy finally settled on a ranch, near, or at the town now bearing his name, about thirty miles south of San José. Although he became rich in land and live-stock, his improvident manner caused his

wealth to glide gradually away from him, until he was actually left penniless. He died the 26th day of July, 1869, about seventy-seven years of age.

Robert Livermore came to this town in 1816. He remained but a short time here, when he went to the valley named after him, some twenty miles northeast from San José. He died in 1857, aged about sixty years. He married into the Higuerra family, became wealthy, and left to his heirs a large estate.

Antonio M. Suñol arrived at Monterey in 1818, and I understand, came to this valley that year. He was an intelligent and refined gentleman, had been somewhat adventurous. He was born at Barcelona, Spain; but he became attached to the French people, and their government, and served in their navy. He was present when Napoleon the First surrendered as a prisoner, before his exile to St. Helena. Mr. Suñol was a generous, kind-hearted, affable gentleman, respected by all who knew him. He died at his residence in San José, March 18th, 1865, aged sixty-nine, leaving a large estate to be distributed among his heirs.

Before the year 1820, the business of the valley, or of the country, was of scarcely any importance. The manner of living was primitive. There was not a vehicle that had wheels with spokes in them in the country. There was no sawed timber; that used for building was hewn with axes

by the Indians. There was not a house with a stove or fire-place in it; and in fact, never was, until the Americans came here in 1846.

The transactions in tallow and hides began to be of some interest about 1820. The American traders then occasionally appeared. The only mechanics were Indians, many of whom had been taught at the Mission to perform various kinds of mechanical labor. There was not a flour mill in the country. All the grain used in the way of breadstuffs, was ground in stone mortars, called *metates*. Boiled wheat, maize, beans, beef and a few vegetables, together with fruits in the season thereof, constituted their chief articles of provisions. A main item of vegetable was the *Chili Colorado*, red peppers. They seasoned their food highly with this; or rather, they used so much of it, that I would be inclined to say that they seasoned the Chili Colorado with the other articles. Never did the Californians set a table without *frijoles* (beans). They would have as soon thought of eating without anything to drink.

The earthquake that occurred in 1822, was not so severe as has been related. It did not destroy the church at Santa Clara. It shook it very hard and injured the walls, but they did not fall. In San José, there was no important building to be affected by it. The houses were principally of one story, and of adobe.

Mexico passed out from under the sceptre of the Spanish throne in 1821, and after a provisional government, under a regency, for several months, the National Congress, at an extraordinary session, held May 19th, 1822, elected as Constitutional Emperor of the Mexican Empire, Señor Don Augustin Iturbide, under the title of August I. They provided that he should take the oath of office before that body on the 21st of the same month, which he did. He reigned but a brief period, and his life illustrates the old proverb, that "Uneasy lies the head that wears a crown." His course enraged the legislative body, and he was forced to abdicate in the following year, and to leave the country. He soon returned, and lost thereby his head as well as his crown; both were buried, but not in the same grave.

The news of his abdication and death having reached California, produced no little surprise at Monterey, but no political disturbance. The Indians at San Diego, after listening to the news, were somewhat astonished. They began to meditate about their own condition and their Chief's conduct. They were not at all pleased with their Captain. So they held a great feast, and, when assembled, thought they would follow the example of the *gente de razon* (civilized people), concluding that it must of course be right. They caught their Captain, tied him, and burnt him alive. They continued their grand pow-wow for eight

days. When rebuked by one of the priests for having acted so brutally, they replied: "Have you not done the same in Mexico? You say your King was not good. Well, our Captain was not good, and we burned him; and if the new one shall be bad, we will burn him, too."

The Indians in this valley made no demonstration on hearing of the news. There were so many of them under the care of the missionaries, who treated them kindly, that they were disposed to obey. And this fact had great influence over the unchristianized ones. And further, there were strict orders from the government officers, to avoid all difficulties with the natives; and to settle, if possible, all misunderstandings and troubles with them by compromise. During the reign of Iturbide, a system of laws for colonization was decreed on the 11th of April, 1823, but was soon repealed; and it is generally believed that no grants in Upper California were made under its provisions.

In 1824, the Republic of Mexico formed a federal constitution, copied principally after that of the United States. It provided for a Supreme Court, Circuit and District Courts, for the federal government. Leaving in the different States, the judiciary to be formed according to State authority; which was, as theretofore, divided into Courts, of First, Second, and Third Instance; and which courts we shall hereinafter more definitely define. On the 18th day of August, 1824, the Mexican

Congress passed a decree for the colonization of the territories.

An incidence occurred in 1828, with an Englishman, William Willis, a resident of San José, which is not altogether without interest. He solicited the Government to grant him a place, or tract of land, called Laguna de los Bolbones, which was denied him. The following decree was made on his petition. "Port of San Diego, June 7th, 1828. Inasmuch as there are in the Pueblo of San José de Guadalupe, lands sufficient on which the petitioner can maintain his flocks and herds, in accordance with the late Bando, (proclamation), published in relation to the matter, the place petitioned for cannot be granted." Willis, considered that by playing it sharply, he would be able to succeed, in spite of the Governor's mandate, to obtain the land. He therefore appeared before the commandant, at the Presidio of San Francisco, and stated that the place solicited was within the jurisdiction of the said commandant. He asked for the concession *ad anterim;* and on the 28th of August, obtained it. The Governor heard of the transaction, and on the 6th of November, sent an order to Lieut. Don Ygnacio Martinez, the aforesaid commandant, requiring him to cause said William Willis to appear before him, and to fine him fifty dollars. The commandant was distinctly informed that he possessed no power to grant lands. A lawyer would be inclined to

consider it the play of diamond cut diamond; and would be at some loss to know how an executive officer under a republican form of government, would find power to act judicially, and fine a citizen to pay a given sum. It is not strange to one versed in Mexican affairs. I must add, however, that a law did exist, giving Governors power to impose fines. But the question is, where did the legislative body derive its power to enact such a law, under a constitution that vests the powers of government in three distinct branches, the executive, legislative, and judicial, and debarring each other from encroaching upon the powers of the others.

On the 21st of November, 1828, the Mexican Government passed a new colonization law, wherein they declared a house-lot should be one hundred varas square. This law defined and regulated the decree passed August 18th, 1824.

Up to December, 1828, there had been eight thousand two hundred and seventy-nine baptisms; two thousand three hundred and seventy-six marriages; and six thousand four hundred and eight deaths, recorded at the mission of Santa Clara, which included those of San José, for reasons already mentioned.

In 1831, San José contained one hundred and sixty-six men, one hundred and forty-five women, one hundred and three boys, and one hundred and ten girls—total, five hundred and twenty-four.

The crops that year amounted to one thousand six hundred and fifty-seven fanegas (about two bushels) of wheat; one thousand five hundred and sixty fanegas of corn, one hundred and ninety-one fanegas of beans—total, three thousand four hundred and eight fanegas. The stock numbered four thousand four hundred and forty-three head of black cattle, two thousand three hundred and eighty-six horses, and one hundred and thirty-four mules; making a total of six thousand nine hundred and sixty-three head. The average price of a mule or saddle horse, was ten dollars; a fat ox or cow, five dollars; and of a sheep, two dollars.

Although the chief business of the inhabitants was the raising of cattle for their hides and tallow, and for which they found a ready market after about 1820, yet their crops of wheat were of no mean importance. It sold readily at three dollars a *fanega*. Their principal purchasers of grain were the Russian-American Fur Company, that established themselves in the year 1812, without permission from Spain, about sixty miles north of San Francisco, on the bay of Bodega; and who, a few years subsequent, made another settlement thirty miles farther north, called Ross, which place they occupied till 1841, when they sold out to Captain Sutter.

After the year 1822, the American and Russian vessels supplied the inhabitants with the major part of the necessaries of life which they themselves did not produce.

After the year 1830, the foreigners began to increase in number. About that time came John Burton, who, by being Alcalde in 1847, cut some figure in the history of the Pueblo. In 1830, the whole number of foreigners in California was estimated at about seventy. Burton married a native in 1831. One or two children by that marriage are now living near Stockton.

Harry Bee left London, England, on the 7th day of January, 1827, and arrived in company with Dr. Douglass, a botanist, the following October, at Monterey. He was long in the employ of the Hudson Bay Company. He came to San José in 1833.

William Gulnac was born in Hudson City, N.Y., August 4th, 1801. He learned the blacksmith's trade. While young, he had a fancy for the sea, which he gratified by sailing around the Horn, in 1819, in which year he settled in Lower California. He there married Miss Maria Isabel de Ceseña, in 1825. He came to this valley in 1833. For quite a period, he was *mayordomo* at the Mission of San José. He died in this valley July 12th, 1851, leaving a family of several children.

James Alex. Forbes and James Weeks came here in 1833; Forbes became Acting British Consul within a few years after. Thomas Doak, William Welch, Nicholas Dodera, Matthew Falon, William Smith, Ephriam Fravel, Thomas Pepper, and an American called "Bill" were all here in

1833. At Gilroy's in that year were John Muligen, and a watch-maker whose name is unknown. In 1834, Thos. Bowen, Wm. Daily and Geo. Furgerson came. The foregoing are the names of about all the foreigners in this valley at the periods mentioned.

The following is an extract of the law governing Pueblos, passed by the Territorial Deputation of California, August 6th, 1834:

"Article 1. The Ayuntamientos will make application through the ordinary channels, requesting lands to be assigned to each Pueblo for *ejidos* (commons), and *propios* (municipal lands).

"Art 2. The lands assigned to each Pueblo for *proprios* shall be subdivided into middle-sized and small portions, and may be rented out, or given at public auction, subject to an emphyteunic rent or tax, *en senso enfiteutico*. The present possessors of lands belonging to the *propios* will pay an annual tax, to be imposed by the Ayuntamiento, the opinion of three intelligent men of honor being first taken.

"Art. 3. For the grant of a house-lot for building on, the parties interested shall pay six dollars, and two reales for each lot of one hundred varas square, and in the same manner for a larger or smaller quantity, at the rate of two reales for each vara front."

Slow, indeed, was the growth of the Pueblo; for in 1835, after an existence of more than half a

century, the houses and huts, all told, scarcely numbered forty; and not more than a dozen were good adobe structures. Among them was a rude adobe building, with a tule roof, used as a church, and for such was it built, partially adorned with pictures of saints and biblical scenes. Service here was not regular, but only when ordered by the priest at Santa Clara.

In the year last mentioned, the present Catholic Church, now encased in brick, was built, on the very spot where the old one stood. It was erected under the supervision of the Alcalde, Don Antonio M. Pico, assisted by Don Antonio Suñol, and also by the advice of the Ayuntamiento. This municipal body was then composed of four persons, namely, one Alcalde, two Regidores, and one Sindico. This church stood as then built until the year 1858, when it was encased in brick, adorned with two towers and other embellishments.

On the 30th of May, 1835, thirty citizens, designating themselves as of the ranchos of the north, that is, of San Antonio, San Pablo, and adjacent places, petitioned the Governor to be exempt from belonging to the jurisdiction of San Francisco, on account of the long distance they were compelled to travel to reach the judicial tribunals. They prayed that they might be attached to the jurisdiction of San José Guadalupe. Governor Castro referred the same for consideration to the Departmental Depu-

tion. That body referred the same to the Committee on Government, which reported that the matter ought to be laid before the Ayuntamientos of San Francisco and San José. The Governor so ordered it. The Ayuntamiento of San José, on the fourth of November, 1835, reported to his Excellency that, in their opinion, the prayer of the petitioners should be granted. The Ayuntamiento of San Francisco, on the 20th of the following December, made a lengthy report thereon, wherein they declared that in their judgment the reasons assigned by the petitioners, were frivolous. Thus ended the matter.

During the revolution of 1836, nothing of interest transpired in San José. Some few citizens left the Pueblo to join the respective factions. The scene of action was, principally, at Monterey, and farther south. That year changed its executive officer, as frequently as its seasons. It had four Governors. The chronic disease of Mexico, revolution, had reached a high fever. It seemed for awhile incurable. The last Governor, Alvarado, came in like a narcotic dose to the body politic, allaying the morbid susceptibilities; quiet was restored, and peace reigned for several years. He held the gubernatorial office until December, 1842. He was anxious to connect his name with the Pueblo of San José; for he insisted for a while, in leaving off the name of the patron saint of

Mexico, "Guadalupe," and designating the Pueblo "San José de Alvarado." We are left in doubt, whether his egotism caused him to imagine that his name would add lustre to San José, or that the latter would embellish his own.

CHAPTER X.

1837–1838.

Applications for Grants.—Commission Appointed to Survey Pueblo.—Survey Made.—Report thereof to Ayuntamientos.—No Action of Government thereon.

In the year 1837, applications had been made to the government for grants of land, which, in the opinion of the citizens of San José, were embraced within the limits of the Pueblo, and known as the Commons (Ejidos). Believing that such grants would be in derogation of the rights of the citizens, a petition was presented to the Ayuntamiento, December 21st, 1837, signed by Manuel Pinto, José Maria Flores, Leander Rochin, Luis Chabolla, José Antonio Sepulveda, Domingo Mesa, José Hernandez, Anistacio Alviso, and José Romera, wherein they declared that they appeared in the name of the whole population, to request the suspension of any act of possession of said lands, until the regulations were complied with, which require a plan of the circumjacent lands belonging to the Pueblo, to be made. And they further alleged that before any land should be granted, the Pueblo ought to be heard in the premises, in order that it might be first decided whether the Mission or Pueblo would be injured thereby; and that in the present instance, if the grants should

be made before the Commons (Ejidos), were clearly designated and marked out, the injury that would arise therefrom, was most apparent. They, therefore, prayed that their petition might be referred to the Governor.

Two days subsequent thereto, a communication was issued out of the Court of First Instance, signed by Juan Avires, at San José, directed to the Provisional Governor and transmitted to him with the following petition: Avires recommended, in consideration of the fact that the manner in which such matters were sometimes managed by the people, caused disputes to arise as to the rights of the property, that a tract of land be marked off for the common use of the inhabitants of the Pueblo, that the tax, (pago á cañon), resulting therefrom would be highly beneficial. He likewise solicited the Governor to say what the limits of the Ejidos should be; observing at the same time that it was necessary to know the boundaries of the Pueblo, and then the Pueblo could proceed to give possession in accordance therewith.

The following day his Excellency replied that in consideration of the petition, the official communication of the Alcalde, recommending the matters contained therein, and that it was one of the functions of said Court to propose to the government everything relative to the formation of municipal regulations, (and from which proceeded the entire system of administration,) he returned the

accompanying documents to be presented to the Ayuntamiento, authorizing that body to appoint a Commission of its own members or of other persons, to make a map or plan of the lands that were to be laid off as the legal endowment of the Pueblo (funds legal), first obtaining the proper information in regard to the neighboring estates, as to their distances, the names of the owners, the springs and groves contained therein. His Excellency further ordered that when these prescribed formalities had been complied with, the expediente (proceeding), should be returned for the decision of the government thereon.

In pursuance of the order of the Governor, the Ayuntamiento took action again upon the matter and appointed Guillermo Castro, Guillermo Gulnac and Salvio Pacheco, citizens of the Pueblo, as commissioners, who, being informed of their appointment, accepted the office, when the following oath was required of them: "Do you swear to God, our Lord, to discharge the duties of the trust that has been conferred upon you by the public, giving conscientiously to each one that which lawfully belongs to him; and, as far as you are concerned, using your best ability and knowledge until you succeed in having plainly marked out said lands, on which the inhabitants can and should subsist in peace and harmony?" to which they solemnly replied in the affirmative. On the 20th of March, 1838, the proceedings of the Ayunta-

miento, thereon were signed by Dolores Pacheco, Alcalde, and the Commissioners.

On the twenty-second of the same month, the Commissioners met in the house of the Ayuntamiento to consult as to the manner of proceeding. Don Salvio Pacheco moved that a secretary be appointed to keep a record of the "interesting proceedings," as he observed, whereupon, they appointed the said Salvio Pacheco as such secretary, who took another oath to perform the special duty. Don Guillermo Castro moved that the proper boundaries of the Pueblo should be considered as identical with those which, in ancient times, were marked out by the colonists, and given by the authorities of those days a short time after the founding of the Pueblo, as appeared from documents submitted to them. He remarked that it was well known that only on the northwest by west, and at the head waters of the Guadalupe northwest by west had there been monuments; and for want of knowledge as to the landmarks at the other points of the compass, it appeared to be necessary to agree as to how many varas a sitio, (tract,) should properly be designated as lands, recognized as the reservations, (propios,) and commons, (ejidos), so that besides the cattle they then owned, and the arable land which they cultivated, they might add to the same and advance their prosperity; and that the Commissioners, without curtailing the extent then embraced between the

points marked out in olden times, or without grasping so much as to do injustice to any, might not fail to carefully guard against any want of accommodation or conveniences for the raising of cattle, which had become important to trade and the subsistence of families.

Don Guillermo Gulnac said that they ought to leave the question, of how many varas of land the Pueblo is entitled to, to the decision of the Government; and that they should merely draw the map or surveys, in order to give with precision the lines and boundaries, recognizing, distinctly, the Arroyo de la Llagas as a well-known landmark.

The meeting adjourned until the next day, when Don Guillermo Castro said, that in relation to recognizing so much land as was embraced up to the point of las Llagas, as had been proposed, there might be found some persons within those limits, who, having had the use of the land from the Ayuntamientos, and who had subsequently obtained the said lands in proprietorship; and if so, it might not be proper to embrace such lands within the limits of such survey, as the said parties would claim the ownership thereof.

Señor Pacheco observed that the right of ownership or possession should be exercised according to law, and without prejudice to the rights of the Pueblo, as pointed out by the tenth article of the Colonization Law, and on the well-known principles, that where there is a denouncement, or where

a party makes a complaint, the possession from that time is null, and in those cases, the right of reclamation remains secure, as is also the case where any irregularities are committed at the time of making the grants. That if there were any private lands within the commons. belonging to the Pueblo, they were subject to the custom of the community, that is, to pay a tax, (cañon) and that even Pueblos themselves were subject to the laws; that the lands of timber, millstones, lime-kilns, etc., were necessary to be kept free for the public benefit. And that, after the survey, the government would decide as to private rights. The views of Pacheco were approved of by the commission.

On the following day, Salvador Garcia and Tomas Pacheco were appointed as witnesses to accompany the commissioners on the survey, and Isidro Cyvrian and Francisco Garcia as chain carriers; all of whom were sworn to faithfully perform their respective duties. They then proceeded to the measurement of the vara. The witnesses stated that it was the Spanish rule, and that it was thirty-six inches.* The carriers measured off a chain of two hundred varas, in order to proceed with the survey, according, as they alleged, to the Colonization law. All which was done in the presence of the witnesses and commissioners, and the said carriers subscribed their names to the oath and the

* The vara is within a small fraction of thirty-three and one third inches of English measure.

measurement of the vara. On the next day, 25th, the commissioners began their work. They proceeded to the east side of the Pueblo, and under a certain live-oak, known from ancient times as being on the dividing line. They ran the first line from northwest to northeast, which passed through the mountains which are called "Las Buellos," "Pala," "San Felipe," "Las Animas," and "Aguages de las Llagas." At each end of the line and in the centre of the "Pala," they established landmarks of stone in a substantial manner. They then ran from the first mentioned point on what was considered the old boundary line from northeast-by-east to southwest-by-west, up to the Embarcadero, (landing at the bay), and to the last live-oak that was seen on the bank of the Guadalupe river at its Embarcadero; said line passing within four hundred and ten varas of the house of José Higuerra, leaving the same outside of the survey, and which line measured two leagues eight hundred and seventy-three varas. The line on the south by the Arroyo de las Llagas being of the same length; and the east and west lines of the Pueblo measuring eleven and one half leagues.

The commissioners then took the bearing from the source of the Guadulupe river to the Puerta de los Capitancillos, the line running northwest-by-west, passing through a certain live-oak tree which was seen from the stand-point, and which was on the elevation of the small hill covered with

chimisal, which was formerly seen in the middle of the grove and oak woods. From the Arroyo de las Uvas they ran the last line to the Puerta de los Capitancillos, which was west-northwest, and east-northeast.

The commissioners stated that when the lines were run in old times, the landmarks fixed to designate them were erroneously placed; that they were found to be within the limits of the Pueblo lands, and within the line on the northwest-by-west, which divides the lands of the Pueblo from those of the Santa Clara Mission. And they suggested that the said landmarks be moved to where they legitimately belonged, and to correspond with the aforesaid bearings.

They made a report of their whole proceedings, which, together with their map, they transmitted to the Ayuntamiento for their consideration.

There seems to be no action of the Governor on this report, nor any further proceeding whatever. The fact that the Governor reported to the Departmental Assembly, in 1840, that no Pueblo had its ejidos marked out, except Monterey, is conclusive that no final affirmative action was taken on this report of 1838.

CHAPTER XI.

1842–1846.

Bickerings between Alvarado and Castro.—Arrival of Gov. Micheltorena from Mexico; his Overthrow and Departure.—List of American and Foreign Settlers.—Fremont's Movements.—Pio Pico favors Annexation to England.—Bear Flag.—Castro's Proclamations.—Com. Sloat's Proclamation.—The Taking of San José by Capt. Fallon.—First U. S. Flag raised in the Valley.—Letters to Fallon from Capt. Montgomery.—Fallon's Departure.

The insurrectionary spirit that had been quelled six years previous had, as yet, given no proof of any forcible demonstrations toward an outbreak. But the bickerings between two of the highest functionaries of the Department, Governor Alvarado and General Vallejo, were anything but favorable to the maintenance of a perfect peace and tranquillity. Each had complained of the other to the general Government, and each had solicited the removal of the other from official position. It was not long before they received information, mingled with satisfaction and disappointment. The compound contained more of the latter ingredient than of the former. Upon the whole, it was decidedly distasteful. They learned in August, 1842, that General Micheltorena had suddenly arrived in San Diego, vested with a two-fold power—that of civil and military

Governor. This was more than either of the discontented parties had expected. Both were alike chagrined at their own respective displacement.

The Californians had never harbored in their breasts any too much friendship or patriotic feeling for the general Government of Mexico. In fact, this same unfriendly spirit had existed, more or less, ever since the Mexican independence. The old settlers, who had served under the King of Spain, looked back with pride and pleasure to the days of regal sway. They would raise their hats at the mention of his Majesty's name. They would repeat, with emphasis: "When we served the King, we received our pay; when we served Mexico, it was not the same!"

It was obvious to the two dissidents that their mutual antagonism had been productive of an absolute loss to both. They concluded, after all, that the animosity which each entertained for the other was far less than that which they both cherished for Mexico. The two resolved to become friendly, and by their united efforts, added to that of General Castro, to drive from the soil him they termed an usurper—General Micheltorena. The three declared California independent, and waged war on the foreign ruler sent from Mexico. Gen. Micheltorena took the field, to quell the insurrection; he advanced within about twelve miles of San José, on the south; but, learning that this part of the country was up in arms, and against him in

spirit, he returned. The insurgents captured San Juan Bautista, while the same was in possession of Micheltorena's forces, in November, 1844.

At last, Micheltorena was completely defeated, and forced to leave the country in an American vessel, which carried him to San Blas, in February, 1845. The Departmental Assembly immediately voted Pio Pico Governor, and appointed José Castro, General.

The first flour-mill in this valley was erected by Pedro Sainsevain, in 1844, on the Guadalupe river.

It will not be uninteresting to the reader to peruse the names of the early settlers in this valley; although I may not be able to give every one, yet the list will not be far from complete.

As I have given the names of those who were here in 1833, I will continue the short list, including those who came as late as 1846, and there rest; inasmuch as a list of the great influx of population thereafter would not only be tedious, but would have a tendency to strip the list of the earlier ones of a share of its interest. The number was exceedingly small, until 1844; there were, probably, a few whose names I have not succeeded in obtaining. In 1838, Henry Woods and Lawrence Carmikell came. Charles Weber, Josiah Belden, Grove C. Cook, Peter Springer, William Wiggins, Henry Pitts, and James Rock came in 1841; they started with a party of about thirty. Peter Davidson came in 1843. Captain Weber was

one of the most active men in the country. He took a prominent part here in the conflict between the United States and Mexican forces, and rendered the American party signal service. He is a man of great foresight, and by his indomitable energy has become very wealthy, and one of the most influential citizens of Stockton, where he now resides.

Josiah Belden came, like most other adventurers, without money, but with a good deal of industry. He carried on the mercantile business here, in which, by close attention to his own affairs, he gradually accumulated wealth. He was honored with the office of Mayor of this city, at the first election under the charter. Although this city is his home, where he erected and now possesses an elegant mansion, surrounded by beautiful lawns, flowers, shrubs, and trees, yet the greater part of his time is spent in San Francisco, where a large part of his real estate is situated. Principally by his shrewd investments in real estate, he became, and is, one of the millionaires of the State.

Grove C. Cook was an uneducated man, but possessed a great deal of native talent; with an education he would have ranked among the first. He was most generous in his nature, disposed to give a helping hand to all who solicited favors. He was full of wit, and few were in his company without being pleased with his manners and his anec-

dotes, told in a most humorous style. Many are the stories told at this day which originated with him. Many narratives of his own actions here have brought forth convulsive laughter. What early settler has not heard him relate how he appeared as attorney for several Mexicans before the Alcalde Court? And how he gravely told the Alcalde, on one occasion, when a Mexican was charged with stealing a horse, that the prisoner was only in fun, and that he would bring back the horse when he had gotten through with him; and how the Alcalde believed it, and discharged the prisoner. He would gravely tell about the conflict of January 2d, 1847, near Santa Clara. How the two forces, not being over a mile apart, traveled all day to reach each other, and did not succeed. Cook became wealthy, but his generosity overbalanced his judgment: he signed too much accommodation paper, and he died poor in Santa Cruz, in February, 1852.

In the spring of 1844, came Thomas Fallon; Julius Martin and family; Thomas J. Shadden and family; Mr. Bennett and family. The wives of the three latter gentlemen were the first American ladies in this country. The following named persons arrived later in 1844: Capt. —— Stephens; Dr. John Townsend and wife; Moses Schallenberger (brother of Mrs. Townsend); Allen Montgomery and wife; Martin Murphy, Sr., wife, five sons and two daughters, as follows: Martin,

his wife and four children, James, his wife and one child, Bryant, John, Daniel, Ellen, (now Mrs. Charles Weber); and Mrs. Jas. Miller; Jas. Miller, Mathew Harlin, —— Calvin, Jos. Foster, John Sullivan, Michael Sullivan, Miss Sullivan, Oliver Magnet, —— Hitchcock and family; Patrick Martin, Sr., and twos ons, Dennis and Patrick; all of whom, except Mr. Schallenberger, reached the settlement near Sutter's, about the 11th of November; and shortly thereafter, came to this valley. Mr. Schallenberger remained on the site now knownas the town of Truckee, until spring, when he also came to the valley. Thomas Hudson and John Conness also came this year.

The party just enumerated, are not all among the living. Death gathered some early; one he left until he became an octogenarian. Dr. Townsend and wife died of the cholera, in the fall of 1850, leaving their son John, two years of age, with quite a fortune. This son, and his fortune, have been under the guidance of the uncle, Moses Schallenberger, who, by his uprightness, energy, and good management, has created for himself an honorable position among men, a fortune for himself, and turned over to his nephew at his majority, an estate that places him among the wealthiest young men of the State.

Martin Murphy, Sr., his wife and children, were born in Ireland, and lived in the county of Wexford. In 1820 they removed to Canada, where

they remained until 1840; but, believing in the principles of a republican government, and not unmindful of the more rapid progress of the United States, in every branch of industry and intellectual advancement over that of Canada, removed in the year 1840, to the State of Missouri, then considered the far West. Having heard of the balmy climate and rich soil of the Pacific coast from the returned trappers and explorers, determined in 1844, to attempt to reap the benefits of this far-off land, by making it their future residence; although a hazardous undertaking for a parent, at the advanced age of the father of that little band. He was a man in good health, of temperate habits, and of strong resolution. He and his family were successful in that long journey, and in the pursuits of life thereafter. He died on the 16th of March, 1865, at the advanced age of eighty. During his whole life he bore a most exemplary character. No man ever charged that he, knowingly, ever wronged another. He commanded the utmost respect of every person who knew him. His word was of equal value with his written obligation. He was industrious and economical; and he thus accumulated an ample fortune, which he left to his rightful heirs. He left a numerous family, who, following the path of their beloved parent, have made themselves highly respected, influential, and exceedingly wealthy. It was the misfortune of his son Bryant to be upon the steamboat, Jenny Lind,

in 1853, when the boiler exploded, whereby he lost his life.

This party was the first one that succeeded in bringing over the mountains any wagons. They reached here with thirteen. Others had started with many vehicles, all of which they were compelled to abandon. Some others of this party, I believe, are dead, and others scattered throughout the State.

In 1845, Frank Lightston came from Oregon, having crossed the plains in the party just mentioned. Also, in this year, came Wm. O'Conner, Wm. F. Swasey, Judge Blackburn, Jacob R. Snyder, Geo. McDougal, Benjamin Lippencott, Peter Hagerty, Wm. R. Bassham, J. Washburn, John Donbenbis, James Stokes, and some others, whose names I have not obtained.

In 1846, the following named persons arrived: Isaac Branham, wife, two sons, and two daughters; Charles White, wife, and two sons; Zachariah Jones, wife and five children—Margaret, Reuben; Samuel E., Laura Jane and Clark; William McCutchan and wife; James F. Reed, wife, and four children—Virginia, Mattie, James and Thomas; Joseph Aram and family; Jacob D. Hoppe and family; Mr. King, William Daniels and family; George Donner, his sister Mary, and cousin, Eliza Donner, (now Mrs. S. O. Houghton;) Arthur Caldwell, wife, one son and three daughters; Joseph Stillwell, Thomas Follner, Elam Brown,

three sons and one daughter; A. F. Jones. wife and three children; Andy Allen, two brothers, Thomas and William, and two sisters, Melissa and Rebecca; William Edgington, —— Walters, —— Jones, John Jones, Anderson Farley, Joseph House, Z. Rochon, James D. Curl, Jackson W. Jenkins, William Smith, Samuel Young and family, consisting of four daughters and three sons; Westly Hoover and wife, John W. Whistman and wife, Wm. Horn and family, Edward Pyle and family, William Fisher and family, A. A. Hecox and family, R. F. Peckham, Calvin Vincent, William Adams, Elisha Adams, Thomas Jones, Thomas West and four sons, (Thomas M., Francis T., Geo. R., and Wm. T.); William and Thomas Campbell, and their families; Peter Quivey and family, James Wilson, James Wilkes, Thomas Kell and family, Mr. —— Lard and family, Septimus R. Moultrie, Samuel Q. Broughton, John Snyder, Mr. —— Bonsol, Michael Murry, Dr. Isabel and wife, Wm. Tabor and family, John Aborn, Mr. —— Wambough, Alexander Godéy, Mr. —— Girard, Mr. —— Ross, Moses Fulma, Henry E. Koeger; Jepthe Osborn, and family of three sons and three daughters; Julius Hanks and family. The remaining biographical sketches that will be given of some of those in the foregoing list, will be found in the chapter on biographies.

There were some others, whose names I have not succeeded in procuring. About the middle of

November it was ascertained that some eighty women and children, twenty-five or more men, and half a dozen boys, nearly grown, were quartered at the Mission of Santa Clara.

In March, 1846, Col. Fremont, at the head of a scientific exploring party, composed of sixty-two men, among whom were Kit Carson and six Delaware Indians, reached the frontiers of California. He visited Gen. Castro, at Monterey, to solicit permission to pass unmolested through the country; assuring the General that his mission was a peaceful one. The General granted the favor, seemingly cheerfully. Fremont, having re-supplied himself with the necessities of the march, proceeded quietly on his way, intending to follow the San Joaquin Valley, on account of grass and water. He had advanced but a short distance, when he learned, much to his surprise, that Castro was up in arms, with a view of driving him from the country. Such a two-faced transaction was incomprehensible to Fremont. But he saw the facts staring him in the face: and he prepared to meet his worst fate. He fortified himself, as best he could, with so small a force, on a high piece of ground called "Hawk's Peak," about thirty miles from Monterey. He saw the enemy hovering round for two days. He sent him word that if he were attacked, he should fight to the last. After about two days, Castro's force left. Fremont then struck

camp, and proceeded on his way to Oregon, according to his original programme.

The question of safety, with all the Americans in the country, was becoming of vital importance. There was no time to be lost in the preparation for defense. In fact, Governor Pico had not failed to uncork the bottle of his wrath which had for some time been gathering against the Americans. He looked upon their increase with hatred. If this country were compelled to change sovereigns, he prefered the crown of England to the republic of the United States. In addressing the Departmental Assembly, in May, of this year, in favor of annexation with England, he observed: "We find ourselves threatened by hordes of Yankee immigrants who have already begun to flock into our country, and whose progress we cannot arrest. Already have the wagons of that perfidious people scaled the almost inaccessible summits of the Sierra Nevada, crossed the entire continent and penetrated the fruitful valley of the Sacramento. What that astonishing people will next undertake, I cannot say; but in whatever enterprise they embark they will sure to be successful. Already these adventurous voyagers, spreading themselves far and wide over a country which seems to suit their tastes, are cultivating farms, establishing vineyards, erecting mills, sawing up lumber, and doing a thousand other things which seem natural to them."

The Americans. knowing their own comparative weakness, but relying on the arrivals of the advancing immigration, their own valor and the superiority of their race as combatants, resolved to raise an independent flag, and to declare California free and independent from Mexico. Finally, on the 14th day of June, at Sonoma, (called by the Indians Valley of the Moon,) they raised the standard to the breeze, known as the "Bear Flag." It was made of a piece of cotton sheeting, having painted thereon the likeness of a grizzly bear, executed with a blacking-brush and a dish of berry juice. This news rapidly spread throughout the country, and both parties were actively engaged in preparing for the threatening conflict. Gen. Castro established his headquarters at Santa Clara; and on the 17th of June, after hearing of the taking of Sonoma, he issued the following proclamations:

"The citizen José Castro, Lieutenant-Colonel of cavalry in the Mexican army, and acting General Commander of the department of California—

"Fellow citizens:—The contemptible policy of the agents of the United States of North America, in this Department, has induced a portion of adventurers, who, regardless of the rights of men, have daringly commenced an invasion, possessing themselves of the town of Sonoma, taking by surprise all that place, the military commander of that border, Colonel Don Mariano Guadalupe

Vallejo, Lieutenant Colonel Don Victor Prudon, Captain Don Salvador Vallejo and Mr. Jacob P. Leese;—Fellow countrymen: the defense of our liberty, the true religion which our fathers possessed, and our independence, call upon us to sacrifice ourselves rather than lose these inestimable blessings; banish from your hearts all petty resentments, turn you and behold yourselves, these families, these innocent little ones which have unfortunately fallen into the hands of our enemies, dragged from the bosoms of their fathers, who are prisoners among foreigners, and are calling upon us to succor them. There is still time for us to rise *en masse*, as irresistible as retributive. You need not doubt that Divine Providence will direct us in the way to glory. You should not vacillate because of the smallness of the garrison of the general headquarters, for he who will first sacrifice himself, will be your friend and fellow-citizen

"José Castro.

"Headquarters, Santa Clara, June 17th, 1846."

"Citizen José Castro, Lieutenant-Colonel of artillery in the Mexican army, and acting General Commander of the Department of California;—

"All foreigners residing among us, occupied with their business, may rest assured of the protection of all the authorities of the Department, whilst they refrain entirely from all revolutionary movements. The General Commandancia under

my charge will never proceed with vigor against any persons, neither will its authority result in mere words wanting proof to support it; declaration shall be taken, proofs executed, and the liberty and rights of the laborious, which is ever commendable, shall be protected. Let the fortune of war take its chance with those ungrateful men, who, with arms in their hands, have attacked the country, without recollecting they were treated by the undersigned with all the indulgence of which he is so characteristic. The inhabitants of the Department are witnesses to the truth of this I have nothing to fear, my duty leads me to death or to victory. I am a Mexican soldier, and I will be free and independent, or I will gladly die for these inestimable blessings.

"JOSE CASTRO.

"Headquarters, Santa Clara, June 17th, 1846."

Fremont hearing that Castro was about to cross the bay with two hundred men, marched for Sonoma, reaching there June 25th. But Castro remained in the valley of San Jose, until he proceeded south.

Captain Thomas Fallon, now a resident of San Jose, then of Santa Cruz, had raised a small force of about twenty-two men, to fight under the Bear Flag. He crossed the Santa Cruz Mountains, came down into this valley in the night, and halted his force near the residence of Grove C. Cook, about one league south of San Jose. He there

learned of the presence of Castro, three hundred strong, in the valley. Considering that an engagement with such an inadequate force as he possessed, to be not only extremely hazardous, but criminal, he fell back into the mountains, and encamped.

Castro was still holding Santa Clara and San José. On the 7th of July, Com. Sloat raised the U. S flag in Monterey. On the 9th, Henry Pitts came riding into San José, as bearer of dispatches from Commodore Sloat at Monterey, to Gen. Castro. The latter was mounted at the head of his men, most of whom were mounted, and after opening the document and ascertaining the substance of its contents, he brought his men into line, just in front of the Juzgado, on Market street, and then exclaimed in a loud voice, "Monterey is taken by the Americans!" He then read the proclamation of Commodore Sloat, which was in Spanish, and is as follows:

"To the Inhabitants of California:

"The central troops of Mexico having commenced hostilities against the United States of America, by invading its territory, and attacking the troops of the United States, stationed on the north side of the Rio Grande, and with a force of seven thousand men, under the command of Gen. Arista, which army was totally destroyed, and all their artillery, baggage, etc., captured on the eighth and ninth of May last, by a force of twenty-three hundred men, under the command of Gen. Taylor, and

the city of Matamoras taken and occupied by the forces of the United States, and the two nations being actually at war by this transaction, I shall hoist the standard of the United States at Monterey, immediately, and shall carry it throughout California.

"I declare to the inhabitants of California, that although I come in arms with a powerful force, I do not come among them as an enemy to California; on the contrary, I come, as their best friend, as henceforth California will be a portion of the United States, and its peaceable inhabitants will enjoy the same rights and privileges they now enjoy, together with the privilege of choosing their own magistrates, and other officers for the administration of justice among themselves, and the same protection will be extended to them as to any other State in the Union. They will also enjoy a permanent government, under which life, property, and the constitutional right and lawful security to worship the Creator in the way most congenial to each one's sense of duty, will be secured, which unfortunately, the central government of Mexico cannot afford them, destroyed as her resources are by internal factions and corrupt officers, who create constant revolutions to promote their own interest and oppress the people. Under the flag of the United States, California will be free from all such troubles and expenses; consequently, the country will rapidly advance and improve both in agricul-

ture and commerce; as, of course, the revenue laws will be the same in California as in all other parts of the United States, affording them all manufactures and produce of the United States, free of any duty, and all for foreign goods at one quarter the duty they now pay. A great increase in the value of real estate and the products of California may be anticipated.

"With the great interest and kind feelings I know the Government and people of the United States possess toward the citizens of California, the country cannot but improve more rapidly than any other on the continent of America.

"Such of the inhabitants, whether natives or foreigners, as may not be disposed to accept the high privileges of citizenship, and to live peaceably under the Government of the United States, will be allowed time to dispose of their property, and to remove out of the country, if they choose, without any restriction; or remain in it, observing strict neutrality.

"With full confidence in the honor and integrity of the inhabitants of the country, I invite the Judges, Alcaldes, and other civil officers, to execute their functions as heretofore, that the public tranquillity may not be disturbed, at least, until the Government of the Territory can be more definitely arranged.

"All persons holding titles to real estate, or in quiet possession of lands under color of right, shall have those titles guaranteed to them.

"All churches, and the property they contain, in possession of the clergy of California, shall continue in the same right and possession they now enjoy.

"All provisions and supplies of every kind furnished by the inhabitants for the use of the United States ships and soldiers, will be paid for at fair rates; and no private property will be taken for public use without just compensation at the moment.

"JOHN D. SLOAT,
"Commander-in-Chief of the U. S. Naval Force in the Pacific Ocean."

After concluding the reading of the foregoing proclamation, Castro exclaimed to his men: "What can I do with a handful of men against the United States? I am going to Mexico! All you who wish to follow me, right-about-face! All that wish to remain, can go to their homes." Only a very small part of the force concluded to link their fate with Castro's. He and his few followers left town that same day southward, bound for Mexico by land; and having that day taken Capt. Chas. M. Weber prisoner, while in his store at San José, carried him with his followers as far as Los Angeles, where he was released.

Capt. Fallon was immediately informed of Castro's movements; he broke camp, and having increased his force to about thirty-one, came into the town of San José on the 11th, took possession of the *Juzgado* (Court-house), arrested Pacheco,

the Alcalde, and ordered him to surrender the keys of the archives, which Pacheco did, rather reluctantly. Fallon assured him that neither he nor his family would be harmed.

On the 13th, Fallon received a United States flag from Commodore Sloat, which he raised that day, on a pole about twenty-five feet high, which had been erected by the Mexicans before the *Juzgado*. Then, for the first time, did the valley breeze play with the Stars and Stripes!

While in command at San José, Capt. Fallon received the two following letters from Capt. Montgomery, stationed at San Francisco:

"U. S. Ship *Portsmouth*,
"Yerba Buena, July 15th, 1846.

"Sir:—I have just received your letter, with a copy of Mr. Jas. Stokes' appointment as Justice of the Peace at the Pueblo; also, a dispatch from the Commander-in-Chief of the U. S. Naval Forces at Monterey, for which I thank you. By the bearer of them, I return a dispatch for Commodore Sloat, which I hope you will have an opportunity of forwarding to Monterey.

"I received your letter of July 12th, and wrote to you by the bearer of it on the 13th, in answer, advising you by all means to hoist the flag of the United States at the Pueblo of St. Joseph, as you expressed to do, if you had sufficient force to maintain it there; of course, you will understand that it is not again to be hauled down. * * * *

"Agreeable to your request, I send you a proclamation of the Commander-in-Chief, in both languages, which I shall be glad to have distributed as far, and generally as possible; and be pleased to assure all persons of the most perfect security from injuries to their persons and property, and endeavor, by every means in your power, to inspire them with confidence in the existing authorities and government of the United States.

"I am, Sir, respect'y, your ob't svt.,

"JNO. B. MONTGOMERY, Commanding U. S. Ship *Portsmouth*. To Capt. Thos. Fallon, Pueblo of St. Joseph, Upper California."

"U. S. Ship *Portsmouth*.

"Yerba Buena, July 16th, 1846.

"Sir:—I have just received your letter, with the official dispatch from Commodore Sloat, which had been accidently delayed one day in its transmission from Pueblo, and am much obliged to you for sending it to me.

"I am gratified to hear that you have hoisted the flag of our country, and cannot but feel assured, as I certainly hope, that your zealous regard for its honor and glory will lead you nobly to defend it there.

"I am, Sir, your ob't svt.,

"JNO. B. MONTGOMERY, Commander.

"To Capt. Thos. Fallon, at the Pueblo, San José, Upper California."

Captain Fremont, on the twelfth of July, moved from his post on the Sacramento for the south, soon reaching San Juan, where he met Purser Fauntleroy with a company of dragoons, composed of sailors and volunteers. The next day after their arrival the two commands marched into Monterey.

Captain Fallon, having heard of Fremont's movements down the San Joaquin valley, prepared to meet him, which he did at San Juan Mission. Before he left San José, he delivered the keys of the archives to Mr. James Stocks, who had been appointed magistrate. At Monterey, Fallon's company was disbanded, and he himself joined Fremont's party, which immediately sailed in the *Cyane*, for San Diego, to cut off Castro in his retreat to Mexico. The latter had, in the mean time, united with Pio Pico at Santa Barbara, making a joint force of six hundred. This force of the enemy marched for Los Angeles, reaching that point in the fore part of August.

CHAPTER XII.

1846–47.

Arrival of Force under Purser Watmough.—Weber and Aram form companies.—Arrival of Lieutenant Pinckney's command.—Prisoners taken by the enemy.—Demand of a surrender of San José.—Refusal thereof.—Bartlett delivered to English Consul by the enemy.—Movements of U. S. forces.—Battle, American victory.—Armistice.—Surrender of the enemy.—Their loss.

Soon after the departure of Captain Fallon, Purser Watmough, of the U. S. sloop-of-war *Portsmouth*, came to the Pueblo with a body of about thirty-five marines. While here, some addition was made to his number by volunteers.

During the year 1846, the Indians of San Joaquin valley had been somewhat troublesome. Even as early as April, the inhabitants had appealed to the Departmental Assembly for assistance. These Indians made frequent depredations among the stock; they would sometimes rally in a force of over a hundred. In August, Watmough, with about thirty of the marines, accompanied with as many more volunteers, pushed over the mountains, met a body of over a hundred Indians, attacked and drove them toward the San Joaquin valley, where they remained. While here, he occupied the Juzgado, (Ayuntamiento building and Court House.) His command left in October.

In this month, commander Hull, of the U. S. sloop-of-war *Warren*, and as commander of the Northern District of California, commissioned Charles M. Weber a Captain, and John M. Murphy a Lieutenant, in the land service for the war. They raised a company of thirty-three men, and established their headquarters in the adobe building now standing in the rear of Frank Lightstone's residence, on Santa Clara street. This company acted as scouts, and scoured the country in every direction in pursuit of the enemy.

During this same month, quite a number of American immigrants reached Sutter's fort. They were immediately visited by Captain Swift, of Fremont's battalion, who was anxious to increase the American forces. Several volunteered. Among the immigrants was Joseph Aram, now a resident of San José. Fremont commissioned Aram Captain, and advised him to proceed with the families to Santa Clara Mission, as more empty houses were there than at San José. Aram followed the suggestion, reaching there in November. They found buildings in anything but a comfortable condition, but they made the best of things. Many became sick, and by February fourteen had died. It had been a very rainy season, and the shelter so poor, that the families suffered considerably.

Captain Aram had organized a company of thirty-two men. He made Santa Clara his headquarters, to protect the families there. He commenced soon

to fortify the Mission, by building barricades across some of the streets, using wagons therefor, and timber obtained by cutting limbs from some of the old trees that had shaded so long the Alameda. He had learned that Colonel Sanchez was roaming the valley with a body of mounted Californians; and he considered that, as his own force was very small, it behoved him to fortify himself as strongly as the nature of circumstances would permit.

Captain Mervin, of the U. S. Navy, on the first day of November, sent sixty men with Midshipmen Watmough and Griffin, under command of Lieut. Pinkney, from the *Savanah*, to San José, to form here a military post, and to protect the inhabitants in this vicinity. Pinkney started early in the morning, and reached the bank of the slough, near where Alviso now stands, about sundown that evening, where he encamped for the night. He had no commissary wagons, and the provisions were transported on the backs of the men. It was a long and tedious march for a body of foot, loaded with muskets and bayonets, cartridges, provisions and blankets. The next day, after breakfast, at about ten o'clock, Pinkney proceeded with his force, arriving in the afternoon at San Jose, when he immediately took possession of the Juzgado (Court House), and occupied the same as a barrack. At night a sentinel stood on the Gaudalupe bridge, and a patrol of six or seven men on watch in the town. Pinkney immediately threw

up a breastwork around the Juzgado. He dug a ditch two feet deep and one wide around the Juzgado, at a distance of about sixty feet therefrom, in which he drove pickets seven or eight feet long; on the outside of which he dug a trench five feet wide and four deep, the dirt from which he threw against the pickets, forming thereby a breastwork. At each corner was a gate, and on each side of the works paced a sentinel.

Near the ranch of Capt. Weber, about ten miles southeast of San José, was herded a band of two or three hundred public horses. It having been reported that a party of mounted Californians were hovering in that vicinity, with a view of capturing them, Capt. Weber, on the twenty-fifth of November, sallied out in that direction with his company, to scour the country, in search of the enemy. Having met no hostile force, the next day he gathered the band of horses, and proceeded southward with them to the ranch of Mr. Martin Murphy. Having rested there until the twenty-eighth, continued his journey to the Mission of San Juan, arriving that evening just before dark.

On or about the eighth of December, Lieut. W. A. Bartlett, of the sloop of war *Warren*, and Acting Alcade at San Francisco, went out from that post accompanied by five men, (among whom was Martin Corcoran, now a resident of San José), to purchase cattle, in order to supply the United States forces with meat. They proceeded to the

vicinity of the location now known as the Seventeen-Mile House, and were in the act of gathering some cattle, when thirty men, under Col. Francisco Sanchez, sprang out from a ravine, and from the woods, and captured them. The enemy carried the captives into their camp in the redwoods on the coast range of mountains; thence they removed their quarters near the land of James Pearce, in the same range, back of San Mateo.

Sanchez soon received a reinforcement which increased his force to a hundred strong, together with a six-pounder.

Information reached San José, that Sanchez was ranging between that place and San Francisco, that he had several prisoners, and was capturing all Americans within his range. Capt. Weber and his company, ever on the alert, were soon in the saddle, and about the 25th of December, on the road in pursuit of the enemy. Having ascertained the whereabouts and force of Sanchez, and considering the numerical inequality of the two forces, Weber deemed it extremely hazardous to bring on a conflict, and therefore immediately pressed on to San Francisco and reported to the commander.

On the 26th, Sanchez advanced into the valley, traversed it in a southeasterly course around the San Francisco bay, and brought his force to a halt near the house of José Higuerra, about ten miles north of San José; keeping his six prisoners with him. After a rest of two days, he ordered

his men to mount and proceed toward San Jòsé. Knowing that Capt. Weber's force was not there, he was much in hopes of capturing the place, even without an engagement. He advanced with his force to the southwest of the town on the Almaden road, halted, and in the afternoon sent a man with a note to Lieut. Pinkney, saying that if the American forces would leave San José, they could do so unmolested; but if they did not leave, he should immediately make an attack, and capture them, as he had two hundred men, he alleged, and was sufficiently able to carry out his design. Just before sundown on that day, Pinkney ordered his men into line, and read to them the dispatch from Sanchez. He then said to them, that if there were any among them who did not wish to fight, they could go back to the ship, at San Francisco. The soldiers gave a unanimous declaration to stay and fight it out. Then exclaimed Pinkney, "By G–d, Sanchez shall never drive me out of here alive!" The soldiers cheered their commander most heartily for his resoluteness. That night the guard was doubled, and the men slept on their arms. They were divided into four squads, and, at the sound of alarm, each division was to rush to a given side of the breastwork; but if the enemy were found all on one side, then the forces were to unite *en masse* on that side. Pinkney expected to be attacked by a force three or four times greater than his own, but that did not cause him to doubt for

a moment the course he intended to pursue, let come what would.

He was a tall, well-proportioned man, over six feet high, with sandy whiskers and hair. He was as straight as an arrow, and looked the soldier all over. His very appearance showed where he would be in a hot contest. There was not a man among his little band that did not have the utmost confidence in him. Thomas Ward, now of Gilroy, was one of his men at that time. Sanchez was by no means elated at the prospects of an encounter with this resolute, though small, force of American soldiers. He rode around the Pueblo in the night, and finally concluded that prudence dictated non-interference. He left before morning, and encamped the next day about five miles north of Santa Clara Mission.

Mr. J. A. Forbes, Acting English Consul, knowing many of Sanchez's men, and his brother-in-law, Galinda, being among them, visited the camp, with the English colors in his hand, for the purpose of prevailing upon Sanchez to surrender the prisoners. The latter could not be prevailed on to accede to Forbes' propositions. Finally, Sanchez agreed that Lieut. Bartlett might remain with Forbes, but not turned over to the American forces. Weber had belonged to the California army, before the outbreak between the United States and Mexico. Sanchez was willing to surrender all the American prisoners, provided the

American commander would deliver Weber to him. Lieut. Bartlett remained with Forbes a few days, at his house in Santa Clara. He wrote to his wife, and in such a strain as though he never expected to see her again. Soon word came to Forbes, from the commander at San Francisco, that if the surrender of Bartlett depended upon the delivery of Weber to Sanchez, the condition would not be accepted; and, therefore, he could return Bartlett to the camp of the enemy, which Forbes did. Bartlett seemed completely demoralized. It is said that he cried like a child, when he went back to the enemy's quarters. This Bartlett is the father of the bride who married a rich Cuban in New York, a few years ago, the marriage ceremony of whom was denominated "The Diamond Wedding."

In the meantime, the American forces at San Francisco were not idle. They had been making preparations to meet Sanchez wherever he might be found. The little army formed for this purpose, was placed under the command of Captain Ward Marston, U. S. Marine Corps, and of the frigate *Savannah.* His force were the following: Assist. Surgeon J. Duvall, Aid-de-camp; detachment of U. S. Marines, under Lieut. Robert Tansil, thirty-four men; artillery, one field-piece, six-pounder, under charge of Master William F. D. Gough, assisted by Midshipman Jn. Kell; ten men; interpreter, John Pray. Mounted company

San José Volunteers, under command of Capt. Chas. M. Weber, Lieut. John M. Murphy, and acting-Lieut. Jno. Reed; thirty-three men. Mounted company of Yerba Buena Volunteers; under command of Capt. Wm. M. Smith; Lieut. Jno. Rose; with a small detachment, under Capt. J. Martin, of twelve men. The whole force numbered one hundred and one men. The expedition moved from San Francisco on the 29th of December, southward down the valley, and on the morning of the 2d day of January, came in sight of the enemy.

Early that morning, Sanchez heard of the approach of the American force. He immediately detailed a squad of twelve men to take the six prisoners off toward the western mountains. The prisoners first started on foot, the enemy having no horses for them, but shortly after procured some for them. The squad went about two miles with their prisoners, and halted.

About ten o'clock, A. M., the American force advanced within a range of two hundred yards of the enemy, when the order was given to open on them. The first few fires broke the enemy's line, when it divided, each division respectively flanking the Americans, but still retreating as the latter advanced. The enemy occasionally would rally in front, though at some distance, but would very soon open, and turn on the respective flanks—thus alternately moving on front and flank. The battle continued some two or three

hours. The firing was distinctly heard at Santa Clara Mission, and at the Pueblo of San José. When Lieut. Pinkney heard the guns, he rallied his men to arms, prepared in readiness a large supply of cartridges, for a long conflict, and stood at the head of his men, anxiously waiting some tidings of the result. He did not know exactly the force of either party, but supposed that the enemy was far in excess of the Americans. He had some misgivings as to the termination, and expected if Sanchez should become victorious, that he would immediately march on the Pueblo. He deemed it hazardous to abandon the Pueblo, to join the conflict, and therefore remained in fighting order, to hold and protect the town. At the Mission, people were on the church and other buildings, witnessing the battle. It has been currently reported that the gamest individual in that Mission, at that time, was Mrs. Bennett, and that the language used by her while the action was pending, was not elegant enough for the general usage of the parlor. She intimated that there was not more pluck among the American male sojourners, than there ought to have been on such an occasion.

The enemy, in his retreat, was moving toward the Mission. Capt. Aram sallied out with his company to employ the enemy's right wing, and check his pursuit on the settlements. Finally, the enemy drew off, unwilling to renew the en-

gagement. Sanchez's retreat was toward the Santa Cruz mountains. Soon thereafter, he sent a bearer of dispatches, with a white flag, to the American commander, embracing terms of surrender upon certain conditions. The reply was that the surrender must be unconditional. Sanchez answered that he would die first ; but that exclamation was in the nature of a bluff—it did not succeed. At last, an armistice was agreed upon, in order that the American commander might send a courier to San Francisco, to the commander of the Northern District, asking upon what terms a surrender should be accepted. Lieut. Pinkney was soon relieved of his suspense by a courier, who carried him information of the foregoing facts.

In the meantime, the American force repaired to the Mission, where they were heartily cheered by the ladies and children. The ladies immediately prepared a good meal for the hungry soldiers.

The Americans in the valley had lost several fine horses by theft; Capt. Aram, knowing that some of them were in the cavalcade of the enemy, obtained permission to seek for them.

On the 3d, he went out to the corral, to take possession of whatever horses he might find belonging to the Americans. While there, Sanchez sent him word that another American force was approaching from the direction of Santa Cruz. Aram

replied that he thought it must be a mistake. Sanchez's men insisted that it was true. Aram then took a position where his sight got a better range, and found the report to be true. Sanchez was uneasy, lest he would be attacked by them, and requested Aram to advance and inform them of the condition of affairs. Aram went out to meet the force, and ascertained that it was Capt. Maddox, of the U. S. navy, with a company of mounted sailors and marines, numbering fifty-nine. Capt. Aram immediately narrated the facts, which was a fortunate circumstance, as Maddox's men were eager to have a brush with the enemy, and appeared annoyed to think that they had been deprived of having it.

On the 6th, a bearer of dispatches arrived from San Francisco, whereby Capt. Marston received orders that the surrender of Sanchez's force must be unconditional. He forwarded to Col. Sanchez a copy of his instructions, who came in on the following day; whereupon, the terms of capitulation were agreed upon, in accordance with orders from head-quarters.

On the 7th, another reinforcement of fifteen men, under Lieut. Grayson, arrived.

On the 8th, Sanchez surrendered his whole force, together with his six prisoners; also his guns, ammunition and equipage. His men were allowed to go to their respective homes. He was taken to

San Francisco, and held as a prisoner, a short time, on board the war vessel, *Savanah*.

It was ascertained that the enemy's loss was four killed, and five wounded. The Americans lost none, and only two were wounded. Jackson Bennet, of Capt. Weber's company, was wounded slightly in the foot, and one of the marines in the head. The latter fell very near Lieut. Murphy, and was supposed at first to have been killed. The ball grazed the top of his head, causing him to fall backward on the ground; but, on examination, it was found that the wound was not dangerous.

This ended the warfare between the American and Mexican forces, in the northern part of Upper California.

If the native Californians who mingled in that conflict, look upon the 2nd day of January as the anniversary of their humiliation, the pride of those through whose veins courses Castillian blood, may soften the asperity of their mortification, as they contemplate that it was upon that day, in the year 1492, that Abdallah, the proud Moorish King, gave in to Ferdinand.

CHAPTER XIII.

1847.

Executive, Judicial, and Legislative Forms of Government.—Jurisdiction of Courts.—John Burton Alcalde.—His Court.—Judgments Rendered Therein.—Burton's Committee.

The forms of governments furnish subjects for the historian, as important as the acts and character of the people that live under those governments. And, as the period during which Mexico reigned over the territory of California, is drawing to a close, I propose now to narrate briefly, the character of the different departments of governmental functions, exercised here under that nation.

California was denominated a Department, and divided into Districts and Partidos. The number of Districts were three, each of which was divided into two Partidos. San José was in the Second District. The archives do not exhibit any record of a division of the territory into Districts and Partidos, prior to the year 1839. On the 26th of February, of that year, Governor Alvarado thus divided it. It was again divided in 1845. The opinion prevails that prior to 1839, the jurisdiction of the Presidios were, respectively, co-extensive with Partidos. The Presidio of San Francisco included San José, Santa Clara, Santa

Cruz, and the Villa of Branciforte, in its jurisdiction from A. D. 1800 to 1830.

There were a Governor and a Departmental Assembly, which constituted the Legislative Department, that held its sessions at Monterey, the capital. The Assembly was composed of seven members. The next highest political officers to the Governor, were the Prefects, the jurisdiction of each, respectively, was a District; there were also Sub-Prefects, with jurisdiction over Partidos; Ayuntamientos (Town Councils), governing towns; and Alcaldes and Justices of the Peace, with jurisdiction over towns and rancherias, (Indian villages.) The two latter classes of officers and prefects exercised both political and judicial powers. [See Appendix, No. 7.]

According to the *Leyes Constitutional*, (Constitutional Laws) of December 30th, 1836, each Department was to be provided with a superior tribunal. On the 23d of May, 1837, the Mexican Congress passed a law making provisions for such a tribunal for California, out of which two Courts were to be formed. This tribunal was to be composed of four judges, (ministros,) and one attorney-general, (fiscal.) The three senior judges to compose the first bench (sala), and the junior one the second. The second bench was known as the Court of the Second Instance, which took cognizance of appeals from the Court of First Instance, and also original jurisdiction in certain cases. The

first bench was the Court of Third Instance, with appellate powers. These Courts were to sit at the capital of the Department. There was to be a Court of First Instance at the chief town in each District, with original general jurisdiction, of all sums over one hundred dollars.

No superior tribunal was ever established under this law in California; nor were there any judges of the Court of First Instance; certainly none in the District of San José until 1849, when they were appointed by American authority. The Governor of the Department, in his message to the Assembly, in 1840, expresses his regret that no superior tribunal exist, and that there are no Judges of First Instance; adding that the Justices of the Peace in the towns had begun to exercise the judicial functions in the First Instance. The Governor also informed that body that they had power by the Act of July 15th, 1839, to appoint judges for the interior; but it seems that that illustrious body failed to use their faculties in this respect.

In the decree of the Mexican Congress, of March 2d, 1843, it is stated, that in the Californias there had been no courts of Second and Third Instance established; and by Act 28th, the Governor of these Departments are ordered "to take care that justice is punctually and completely administered in First Instance, by Judges of that grade, if there be such, or by Alcaldes, or Justices of the Peace."

But the Supreme Court of the United States, held, in the case of the United States vs. Andrew Castillero, 2 Black's Rep., that the Alcalde in San José could not perform the functions of Judge of First Instance, under the mining law, as provided by the Mexican decree of December 2d, 1842; and therefore, the Alcalde's acts, in relation to the perfecting the title to the Almaden mines, were void. The judicial officers, then known at San José, were First and Second Alcaldes, and Justice of the Peace. Their powers, both political and judicial, are given in Appendix No. 7; also those of the Judge of First Instance.

A trial before one of these courts was quite summary. There were, before the ingress of Americans, no lawyers. The Alcalde generally walked with a cane; and not unfrequently, that cane had a silver head; and with it he summoned parties into court. When a man, bearing the Alcalde's cane, verbally summoned another person to court, that person usually obeyed, for he well knew that the sign, carried by the summoner, was as genuine as the Alcalde's signature and seal attached. As sure as a person disobeyed, just so sure was he to pay a fine. When the parties came before the court, each one, if he wished, could select an arbitrator (hombre bueno). Then the Alcalde made both parties tell their story, and heard their witness, if any; then the arbitrators and Alcalde would decide. Sometimes the Al-

calde would decide the case himself, and very quickly too.

As there were no very good jails or prisons in the country, it was customary to flog the Indians for committing crimes, and the other people were fined. Occasionally, culprits were imprisoned and worked in the chain-gang.

One John Burton, who came to San José about 1830, or a little before, was a man of but little book-learning. Now, John came from Massachusetts, where schools are common, but did not have the luck to stay long in those schools. But, after all, he was a man of considerable sound sense, and very honest. He was one of the first (appointed) Alcaldes in 1846, after the hoisting of the stars and stripes in San José. John's docket presents some interesting cases, a few of which I will cite: Sometimes John would make the Territory of California plaintiff, in a criminal case; and sometimes he would call the complaining witness plaintiff. On one occasion, Juan Meresia appeared before the Court, and charged one Ramon Soto, after having pawned a serapa (blanket) with him, of stealing the same. Burton enters the complaining witness as plaintiff, and records the judgment as follows: "The case having been entered into, and the parties being present, it was clearly proved that said Ramon Soto was guilty of the charge. After duly weighing the case, this Court adjudges him guilty, and orders the defendant to pay a fine

of five dollars ; six dollars for the serapa, and costs of Court, taxed at one dollar and seventy-five cents, to be paid forthwith, or labor on the public works."

On another occasion, one Thomas Jones made a complaint before Burton's Court, that Pedro Mesa had stolen his (Jones') horse. In this case, the entry is made : "Territory of California *vs.* Pedro Mesa. May 1st, 1847. The parties having appeared, and the case entered into, after weighing the case and taking the testimony, judgment is rendered that defendant shall pay a fine of five dollars, and nine dollars for saddling the horse ; and costs of Court, taxed at four dollars and seventy-five cents ; two dollars for the guard." Burton was evidently a mild man—a good-natured sort of man, who could give a thief a show to get even. The punishment was so light, that if a thief was caught occasionally, the avocation would still be profitable. And I presume he never let a prisoner off without a fine of some kind, because, according to his language in the judgments, he usually "weighed the case, and then took the evidence." That is, he first made up his mind whether the defendant was guilty, and then, for form's sake, heard the evidence.

He rendered judgment in another case, which was one of a difficulty between man and wife, that might be usefully followed at the present day, per-

haps, in California. I will give a copy of the judgment, which is as follows :

"Juan Lesaldo *vs.* Maria de las Naves. On complaint of plaintiff that defendant, his wife, he believes is about to abscond; he, therefore, claims that she be brought before the Court, to show cause why she will not live with him. A summons was issued April 27th, and returned served. The parties having appeared, and the case entered into April 27th, 1847. It is directed that they be united again, and if not, they shall be imprisoned until they consent to live together. May 1st, a letter was sent to the priest of Santa Clara, who ordained that they should be compelled to live together. After three days time was given for reflection, she still refused to comply. May 4th, 1847, defendant was put in prison until she should comply with the order of the priest."

I do not know how long she stayed in jail. Perhaps three days reflection in jail was of greater moment than that which was exercised outside. Neither do I know where the Judge found his law, except in his own brain ; and I am of opinion that at least half of the law, generally executed, was found only in the Judge's head. Whether right or wrong, cases were quickly decided, and no long appeals followed. There was not a man learned in the law throughout the whole Territory, and the Alcaldes interpreted the law by what they termed the rule of common sense; or rather,

in many cases, what suited their own notions. Every case stood on its own bottom, and no citing of the doctrine of *stare decisis*.

These Courts possessed two admirable attributes, namely, rapidity and cheapness. The judicial proceedings I have herein exhibited are, indeed, somewhat novel, and are inclined to produce merriment; but not more so than judicial events which have transpired under a more enlightened government and people, within the same territory.

As the country was held by the military, and no one knowing much about the law of Mexico, the government was managed upon general principles of right; or, rather, what those in power thought was about right. Burton, in the latter part of 1846, did not want to trust altogether upon his own judgment in the affairs of the Pueblo. The war had not then ended; the enemy were in the field, and in the valley. He came to the conclusion that, as his office was one of importance at that period, he would have advisers. Perhaps, he looked upon them as a cabinet, and he, himself, the King of the town. However, he appointed a body of men, which he called a committee; without any definitely specified powers. Now, there never was a body of men vested with such unlimited powers as Burton's committee, as his notice attached to the list of their names will evidence, which is as follows: "Antonio Suñol, Dolores

Pacheco, José Fernandez, José Noriega, Feliz Buelna, Salvador Castro, Guillermo Fisher, Isaac Branham, Grove C. Cook, Mr. White, Capt. Hanks, Guillermo Weeks. The above are individuals called upon to form a committee in the Pueblo de San José, on the 6th day of December, 1846, for to sit and decide on anything that may be required for the benefit of said Pueblo.

"JOHN BURTON.

"Pueblo de San José, 5th December, 1846."

It is an evidence of unlimited faith, as well as of power, in the men. Probably, no American community would, at the present day, be willing to submit their government to any set of men in that form. It is illustrative of the times and people at that period.

CHAPTER XIV.

1847.

Survey of the Pueblo Lots.—Claims to the Lands under Old Titles; Rejection thereof.—Re-survey of the Pueblo.—Survey of Five Hundred Acre Lots; Titles therefor.—Burying Grounds.—Re-survey under City Authority; Maps thereof.—Unimproved Park.

The influx of American population had now become considerable, and they saw the necessity of shaping the growing Pueblo into some regularity. Ample evidence lay before them that the ancient inhabitants and the natives of the day had been governed by no mathematical principles in the construction of the town; for there were no roads or streets laid out on rectilinear or curved lines, but crooked as the cow-paths in ancient Boston, where the streets to-day, following those paths, attest the fact that the cows were not as true in their course of travel as the busy bee.

At the request, and by the authority, of the Ayuntamiento and Alcalde, Mr. William Campbell, aided by his brother Thomas, both of whom are now living in the valley, surveyed a plot of land for building lots; this was in May. As he proceeded in this vocation, the natives gathered, like boys at a circus, in wondering curiosity, to see the trembling needle refuse to point in any other direction save that of north and south. They did not

exactly understand it, but supposed it was some new Yankee invention.

It was then considered that a tract of about a mile square, would be sufficient for the growing wants of any town in this far-off land. The survey made by Mr. Campbell embraces about that quantity. It extended east from Market street to Eighth street; north to Julian, and south to Reed street. Mr. Burton, who had resided here for nearly twenty years, said that, according to the law and facts as he understood them after considerable observation, no suerte claims extended farther south than Julian street, except the Gongora claim. and none east of Market street.

While Mr Campbell was surveying the land where Santa Clara and First streets cross each other, Mr. Charles M. Weber presented himself and forbade the survey, claiming that the land in that immediate neighborhood belonged to him, by virtue of a purchase of the same from Anistasio Chabolla, who had owned two suertes. Mr. Campbell suggested that the survey would be of no disadvantage to his rights, but, on the contrary, of material benefit. Mr. Weber, taking the same view of the matter. left the premises; and Mr. Campbell proceeded with the survey. There is in his survey eight blocks east of Market street, and nine blocks between Julian and Reed streets; San Fernando street just south of the Catholic church, is the base line. The length of the plot northwest and southeast is

five thousand six hundred and seven feet. The direction of the northerly and southerly streets is north 45 deg. west, magnetic course; variation of needle 15 deg. 22 min. east at that time. The cross streets are at right angles with them. Mr. Campbell reserved four blocks of the land now in Washington Square, as a public square, and so called it. He executed a map of his survey, and transferred the same to the Alcalde; which is now on file in the office of the city authorities, but so worn that it is rather difficult to wholly trace the survey.

After the completion of this survey, Alcalde Burton gave public notice to all persons having claims to land within the limits of Campbell's survey, to present themselves before him, Burton, at his office, and if their claims were found to be valid, that he would give them a new title therefor.

Mr. Weber exhibited a title from Anistasio Chabolla, calling for two suertes of land, the boundaries of which were in substance as follows: "Commencing at a point on Santa Clara street about forty feet west of First street, thence northerly following an old acequia, or ditch, through the Knox block, and continuing a little beyond St. John street; thence easterly to the alkali grounds just across Third street; thence southerly taking in the Pfister block, crossing First street and including a part of the Levy block; thence westerly to the place of beginning." Burton looked at the

title for a moment, then raised his head. and said "Captain Weber, this won't do, it smells of fraud;" meaning that Chabolla was guilty of fraud in selling to Weber. Weber went out, in a bad humor, exclaiming, the time would arrive when he could obtain his rights. Within a few days thereafter, a compromise was made, and Burton, as Alcalde, granted to Weber, lots, Nos. 1, 2, 3, and 4 in block number one, range two, north of the base line.

Notwithstanding this compromise, we have seen suits instituted by Chabolla's heirs and their grantees to obtain possession of the two suertes. Probably the grantees of Chabolla's heirs were wholly ignorant of this transaction.

Antonio Pico also appeared before Alcalde Burton, and solicited a title to a tract of land immediately east of his residence, and south of San Fernando street, four hundred varas long and fifty-five wide; claiming the same through a deed executed to him by some party then living at Monterey. Burton considered that Pico's grantor had no title to convey, and therefore refused to grant the same land to Pico. Suits for this tract, through the grantees of Pico, have been instituted, but unsuccessfully prosecuted. No proposition was clearer in the mind of honest John Burton, than that all claims within the survey of Campbell were without any valid foundation. He was satisfied that some respect had been paid to the

Spanish Mexican law in regard to towns, although not wholly attended to, so as to fix with absolute precision, the lines between the different classes of land. But he did not believe that cultivable lands in large tracts, were in a stone's throw of the Plaza in every direction. On the west, it is true, that suertes came very close to the Plaza, but this is accounted for, by the reason of the necessity of having lands for cultivation near the river, where an abundance of water could be had for irrigation. All the Alcalde grants under this survey, have been held valid by the Supreme Court of this State.

The new American settlers' minds were filled with land speculations. They saw around, and adjoining this town plot, a large expanse of level land, rich in soil, attractive in climate. They were principally emigrants, from the Western and Middle States. They had witnessed colossal fortunes reared by the enhancement of the value of real estate. They believed they were in a like condition, and surrounded by the same probabilities that encompassed the earlier pioneers in the States whence they came. They were impressed, in fact, were positively informed that, although the territory of California was only under a military government by conquest, yet, the war with Mexico would not close without a treaty, which would embrace in its provisions, the cession of this domain. With all these facts before them, they could

not believe that when that cession of territory should become final, and a true knowledge of this country be universally spread before the American people, that it would be unoccupied, or lay wholly dormant, unsought, and uncultivated. Possessing these views, and not altogether unselfish, they deemed it wise to divide out the lands of the Pueblo among the heads of families; and that the earlier the act should be completed, the less the number of those heads. They called the people together, for the purpose of carrying out these ideas. There appeared to be no objection. They made an estimate of the quantity of land not embraced in the town plot, and within what they believed to belong to the Pueblo. Upon that estimate, it was considered that the survey should be in five hundred-acre lots. So, in July and August, 1847, the survey was made by J. D. Hutton. The lots were numbered; corresponding numbers were written on bits of paper, and placed in a hat. Each head of a family was entitled to draw a number. Some few unmarried men were included in that class; perhaps, it was because they were considered as having so much *head*, that they would not allow themselves to be left out of the ring. The drawing was completed; each taking his choice of lots in the order of the number which he drew. Thus, the person drawing number one, had the first choice of lots in the whole survey, and so on through the whole draft.

The drawing being completed, the Alcalde made titles to the respective heads of families, according to their respective selections of lots. Thus originated the grants in this valley, familiarly known as Five Hundred-Acre titles. These titles have been declared invalid by the Supreme Court of this State, of which I shall say more hereafter. A lot of fifty varas square was laid off for a burying-ground, near the corner of Eleventh and William streets. A few persons were buried there; but in 1849, the present burying-ground was laid off, about three miles south of the city.

In May, 1848, a resurvey was made of the town plot, surveyed by Campbell. Mr. C. S. Lyman, now a Professor in Yale College, left Connecticut in 1845, and sailed to the Sandwich Islands, where he remained and taught school, assisted by Mr. Thomas Douglass, now of this city. Both gentlemen came to this coast in 1847; both were scholarly men; and Mr. Lyman a practical surveyor. The latter became acquainted with the Commander of the District at San Francisco, who appointed him United States Surveyor for the Middle Department of Upper California. He then, or shortly after, came to this valley. Population began to increase rapidly, and the citizens here, contemplating a further increase, thought it advisable to obtain the advantage of Lyman's scientific skill in the laying out of the town, knowing that he possessed not only the requisite knowl-

edge, but the necessary instruments. He, therefore, was employed to resurvey the town, which he did, and adjusted with exactness the lines and bearings. He enlarged to what it is now, Washington Square, and gave it that name, its dimensions being eleven hundred and sixty feet long, and one thousand and five wide. He also reserved the square, known now as St. James Square, which is six hundred and ten feet long, and five hundred and fifty wide. Market Place was surveyed by him, as containing eleven hundred and sixty feet in length, and two hundred and fifty-nine in width. He extended the town plot eastward to Eleventh street.

The common blocks are five hundred and fifty feet long, and two hundred and seventy-five feet wide. Blocks No. 1, north, between San Fernando and Santa Clara streets, are six hundred and eighty-seven feet six inches by two hundred and seventy-five feet. Blocks Nos. 1, 2, and 3, range one, north, are four hundred and twelve feet six inches wide. Block No. 3, range one, south, is three hundred and forty-two feet wide at the north end, and two hundred and eleven feet at the south end. Block No. 4, range one, south, is one hundred and ninety-six feet nine inches at the north end, and sixty-five feet at the south end. Block No. 5, range one, south, is fifty-one feet and six inches at the north end, and runs to a point at the south end.

The streets east of, and parallel with, First street, are named numerically; and their bearings are, north 30 deg. 39 min. 45 sec. west from the true meridian, the variation of the compass being then 15 deg. 22 min. easterly. The cross streets are named after persons, and are at right angles with the others. Market, Santa Clara, and Main (Fifth) streets, are each one hundred feet wide. First street, and all parallel with, and east of it, except Main or Fifth, are each eighty feet wide. San José and San Pedro streets are each sixty feet wide. Ranges are counted eastward—range eleven is bounded by Eleventh street. The blocks are numbered north and south of the base line. Mr. Lyman certifies in his report of the survey, as follows: "The entire length of the town plot, as measured from the south side of Julian street, to the southern extremity of the plot, is five thousand six hundred and seven feet and six inches. This distance is a little greater than the true English measure, on account of the chain with which the survey was made, having been lengthened to make it correspond with the chain used in the original survey, in order that the resurvey might be on the same scale as the former, such having been the directions under which the last measurement was made." This certificate suggests itself, the necessity of the resurvey.

This survey is bounded on the southeasterly side by Five-Hundred-Acre lot No. 10; and on the

easterly side by lots Nos. 13 and 14 of the same class. Additions have been made to the foregoing plot by individuals who claimed to own the same under the Five-Hundred-Acre titles, and suerte titles. Those city lots based on the Five-Hundred-Acre titles have, within the last few years, been made valid, by conveyances from the city authorities. The several additions will be best understood by reference to the map.

A survey was made of the city of San José, and a map drawn thereof, by Thomas White, then City Surveyor, by order of the Common Council, in the year 1850. This survey embraced nearly the same extent of territory as the city now contains, but with some variation; which will appear more definite by a reference to the respective maps now on file in the office of the City Clerk.

The city limits now, northwest and southeast, are three miles long. The greatest width on the northerly line is about twelve thousand three hundred feet, and on an average about two miles. The northerly and southerly boundary lines run parallel to the streets, which run in the same direction; that is, as Santa Clara street. The eastern boundary is the Coyote creek; and the western boundary line south from the base line (San Fernando street), runs parallel to First street, at a distance of six hundred and sixty feet west of the bank of the Guadalupe river, measuring at a point on said bank on a line with San Fernando street;

from said point, the said western city line runs to a point on Rosa street, which is six hundred and sixty feet from the west bank of said river, and which bears 1 deg. 36 min. west of a point on a line with San Fernando street.

Messrs. Sherman Day and W. J. Lewis made a survey and map which, I believe, correspond with those made by Mr. White.

Messrs. J. H. Pieper, City Surveyor, and A. T. Herrman, draftsman, have the present year executed a large map, for the use of the city, which is about ten by eight feet in area. It embraces some private lands that have recently been surveyed into building lots. It is a very valuable and complete map; that is, complete so far as lands have been surveyed into town lots; and as rapidly as additions are made thereto of town lots, they will be noted on the map.

In 1850, and for many years prior and a few years subsequent thereto, an acequia, or ditch, about four feet wide, ran in a zigzag course northwesterly, and east of the Guadalupe, between San Pedro street and the College of Notre Dame, connecting with a branch of said river about a mile north of the base line. The southern end of said acequia connected with a little pond, near Virginia street, fed by the arroyo Tulares, and a branch from the Guadalupe river. There was an officer of the Pueblo who watched and protected this little stream, so that every one who was entitled

to water therefrom might be properly served. Under American authority, for several years, a city officer had likewise charge of the same. This acequia was of great benefit in the way of irrigation to the early settlers, and until the period when the boring of artesian wells was found to be a success.

The city now has an enchanting spot of hill and dale, with sparkling water, of four hundred and ten acres, about six miles east of the city. The ground is unimproved, yet it is a delightful spot to while away a few of the summer hours. It is what the city should always hold in reserve as a public ground, where the citizens may feel at liberty to congregate for picnics, or any other recreation, agreeable. It will not be many years before the road to it will appear to be very short, as the growing city stretches out in that direction, with its railroad.

I have thus related the facts pertaining to the Pueblo and City surveys, maps, and land altogether, instead of stating them in chronological order, inasmuch as the reader may better comprehend them in a continuous chain.

CHAPTER XV.

1847-8-9.

Improvements.—Discovery of Gold.—Exit of Population to the Mines. Peralta's Opinion of the Gold; his Life.—John M. Murphy's Success.—Crimes, Convictions, and Executions.—Aspect of the Pueblo.

In 1847, improvements were slowly advancing. The population was yet small; although the number of foreign residents had somewhat changed the aspect of the town. Mr. Zackariah Jones opened a hotel in the old adobe building, now standing on the east side of Market square, near San Antonio street. As there was not much enlightment in the place at that time, he did not wish to appear too brilliant, by giving his public-house a very bright and shining name, so he called it the "Half Moon." A family of Wests kept a livery-stable on First street, where the new building called Music Hall is situate. The adobe building now standing just south of it, was built by them about the first of the year 1848. There were a few stores. One kept by Weber and Lightstone, in the adobe house now in the rear of Lightstone's residence; one by Peter Davidson, and one by Antonio Suñol.

And thus Yankee dickering, carried on principally by Europeans, kept pace with the wants of the community.

The natives had learned some of the mechanical arts, principally from those taught at the Mission in previous years. They made shoes from leather tanned by themselves, in a hurried process ; that is, a sham process. They used to take a large ox-hide, gather up its corners, hang it on a tree or beam raised with posts, then fill the hide with water and oak bark, and place therein the skins to be tanned. In this manner they prepared sole leather. The uppers for shoes were made from smoked deerskin, colored. Not a bad-looking shoe was the final result of their labor on skins.

At that time, the plains east of First street looked quite white with bones of the cattle, which had been slaughtered by thousands for their hides and tallow. Capt. Weber had a corral (pen) for his horses on the ground where Pfister's store now stands, on the corner of Santa Clara and First streets. About a dozen houses were erected that year.

Mr. William Campbell commenced to build a saw-mill, on arroyo Quito, now called by some Campbell's creek, about ten miles west of this town. It was the first attempt to build one in this valley. He did not complete it until the latter part of 1848, on account of the scarcity of labor immediately after the discovery of gold. Some

activity commenced in the way of prospecting the quicksilver mine in 1847, now known as the New Almaden, which mine I shall subsequently herein describe.

On the nineteenth day of January, 1848, gold was discovered. Not many days elapsed before it was circulated with electrical rapidity through the whole Territory. When the existence of the precious metal became a settled fact, every living man was anxious to try his hand with the pick, shovel, and pan. So many men left the valley of San José, it was questioned whether the town was sufficiently protected; but no serious depredations were committed on account of the weakness of the protective force. A great many crops were sown that were never harvested by man. The cattle, horses, and hogs reaped where man had sown. The chances were supposed to be better in the fields of of real gold, than in those of the golden grain.

There was an aged man, with whom Time for nearly a century had dallied, and drawn from his dark locks their color, blurred his sight, and deadened slightly the sensibility of the ear-drum; and yet, though a little superstitious, was not wholly deprived of his judgment. That man was Don Luis Peralta, one of the first settlers of San José, and the most intelligent among that group. His head had been filled with the wonderful stories of the earth's hidden wealth. Aged as he was, and having sons advanced to the period of three

score years nearly, he deemed it his parental right and duty to give those sons some advice, while everybody seemed to be carried away with excitement. So he called his sons, and said to them: "My sons, God gave that gold to the Americans. If he had wanted the Spaniards to have had it, he would have let them discover it before now. So you had better not go after it, but let the Americans go. You can go to your ranch and raise grain, and that will be your best gold field; because we all must eat while we live."

It was as good advice as men of sharper intellect could have given. Some who adopted that course became quite as wealthy as the most of those who followed the excitement.

It will not be amiss to give a passing notice of Don Luis, as he has figured so much in the earlier part of the history of San José. He left Spain when a boy, in company with a brother, and settled in the State of Sonora, Mexico, at Tubac (now in Arizona). He came to the Presidio of San Francisco when but a boy, and was in the service of the King as a soldier. He became a sergeant. He remained in the service many years. He married early into the Alviso family, who also came from Sonora. He was the father of fifteen children, five of whom are now living—two sons and three daughters. He died in 1851, leaving a large estate, disposed of by will, but which was attacked in Court, upon the ground of incapacity

of the testator, and the allegation sustained. He was reported to be at his death one hundred and three years old. His son now declares that he was but ninety-three at his death, and that he was of sound mind. He died in an adobe house on San Pedro street, San José.

The remarkable fortune of a person in mining, now a resident of San José, was so much like the Arabian Night's tales, that I cannot refrain from detailing it. Had he kept his fortune, he would, by its increase, have been one of the wealthiest men of the nation. But his bump of generosity is too great; he was too benevolent, and the fortune came too easy to be appreciated. I refer to Mr. John M. Murphy. He left San José in April, 1848, and went to Weber creek, in Placer County. He employed a few Indians who had belonged to the Mission, and they induced many of the wild ones to accompany them, until Mr. Murphy had, at one time, nearly one hundred and fifty of them working for him. His influence with them was as productive of gold as the exclamation of "Open Sesame" by Ali Baba, at the cavern door of the forty thieves. After working a few weeks at the first location, they moved to what was called dry diggings, where Placerville is situated. A part of the Indians were from Stanislaus County. About September, Mr. Murphy sent the Indians from that section back to their old grounds to seek for gold. They went, and shortly returned, saying that they

had found plenty of it. Murphy then moved to that new place, and there remained until about December, 1849. He had buried in the ground nearly two millions of dollars worth of gold. But at that time, it was sold cheaply. Coin was scarce, and most of the people, for a long while, did not know its real value. It was customary to sell the gold at four dollars per ounce, which was intrinsically worth over sixteen. It was not unusual for Mr. Murphy to take in at his store, twenty-five pounds of gold per day. When he first went to Weber creek, but two other white men were there. His brother Daniel, and one Dr. Isabell were his partners; although it was not then known, except between the three. No man ever asked Murphy in those days for money, without obtaining it.

In the latter part of 1848, some of the residents returned to San José. Provisions began to enhance in price. The crop of wheat sown was not relied on, as it had not been, in fact, harvested, with the exception of a few patches. The flour used came principally from Chili; the price reached twenty dollars per barrel. Mr. Campbell that fall, finished his sawmill. Zachariah Jones commenced, subsequently to Campbell, to erect one on Los Gatos creek, and completed it a month prior to the finishing of Campbell's. Lumber was exceedingly high, and the selling of it looked as profitable as the digging of gold. Labor of every kind

was enormously dear. The mere hauling of lumber from those mills to San José, cost one hundred dollars per thousand feet; and other classes of labor in like proportion. The first brick houses were erected this year; one by Mr. Osborn, on Fifth street, at the corner of St. John street; one on Fifth, between St. John and St. James streets; and one on St. John street, between Fourth and Fifth streets, by Geo. Osborn.

Crime had commenced to increase. The travel to the mines on uninhabited roads, presented opportunities for highwaymen to carry on their vocation with considerable success. About the 22d of December, 1848, Mr. Thomas Fallon (a resident here now), was coming down from the mines to buy cattle, having with him two thousand five hundred dollars in gold dust around his body, and about seven ounces in his pocket. He also had seven horses, and a servant, but no arms of any value, as he had lost a part of his pistol. He camped near San José Mission one night. Three Americans camped near him, one of whom he had known at Santa Cruz. He did not like the appearance of them. He told them that he had sent a man on with money some days before, to buy cattle, and that he had heard nothing from him. He further observed that his horses were tired, and that he would like to trade for their best one, if he had money enough. They said they would swap for six ounces, in exchange

for the one Fallon had been riding. He remarked that he did know whether he had so much money, but taking out his purse and weighing the contents, found that he had nearly seven ounces. He gave them the six ounces, and made the trade. This was intended wholly as a blind, and it was a successful one. Fallon slept that night unmolested, from the fact that the highwaymen supposed he was no longer in the possession of funds. The next morning, he started for this place, on his route to Santa Cruz. The highwaymen proceeded northeastward, and met two Germans, who had eight thousand dollars in gold dust. The highwaymen shot both; one mortally, the other in the arm, but not so badly as to prevent his escape. He reached San José, informed the people, who prepared armed men to search for the murderers. The latter also came into the valley; having so much money, they concluded they could live easily, and pass on without detection. They encamped near the Guadalupe river, a little north of the main part of the town. In a few days they were discovered, caught, tried by a jury at the Alcalde's court, and within three days hung on the plaza. They were taken in a wagon, which was driven under the scaffold; the rope adjusted, the wagon removed from under them, and they left dangling in the air. This was performed in January, 1849. It was summary justice, indeed; no time for appeal to a higher court—in fact, no

higher court existed; and really, when the wagon went out from under them, they doubtless concluded that they had gone as *high* as they desired. One of them confessed the crime, and admitted that Mr. Fallon's life had been saved from the belief that he had no money after the horse trade. The criminals were not unknown to some of the spectators at the death scene, whom they bid farewell; and one particularly addressing himself to Julius Martin, exclaimed rather affectionately, "Good-bye, Julius!" These executions were the first ever performed in San José, at least, by the Americans; and probably, the very first, as the Mexicans, when they took life as a punishment, did the same by shooting.

About Christmas in 1848, probably between that and New-Years, it snowed in this valley two or three inches deep. Such a thing was never known here before. One José de la Cruz Sanchez, remarked at the time of the snow, that he was then sixty-four years old, and born in this country, and never had seen snow in the valley before. He resided north of San José thirty-miles, on the Buri-Buri ranch, but in the valley. Snow frequently in the winter is seen on the surrounding mountains, as low as about seven hundred feet in altitude. It lasts but a day, and scarcely half of that, if the sun be not clouded.

The year 1849 brought new life into San José, as it did in fact to various other localities through-

out the then territory. Although there had been a universal rush to the mines, it had somewhat abated; that is, all that had taken their chances with pick and spade, had not been successful, notwithstanding the hardships and deprivations with which they met. The necessities of the people increased, and the production of them required other application than that of mining. Many had returned to San José, after trying their fortunes in the mines, others came to the valley without first experimenting in the art of mining. The influx was greater than the outgoing stream, and the town wore more the aspect of a half military and half civil settlement. The numerous white tents that dotted the plains, some of which were arrayed in regular order on a line with the streets, gave a military air to the scene. It is true, no long array of bristling bayonets were seen, but the bowie-knife and revolver were belted on the majority of men, and strains of martial music greeted the ear, calling for recruits under the banner of King Phar-a-oh.*

All of the necessities of life became exceedingly dear; cultivating the soil had been almost wholly neglected, flour went up to fifty dollars per barrel; nearly all that was consumed came from Chili, as it had in the latter part of the previous year. The reapers of the Chilian fields had found a golden

* In the technical language of the faro dealers and players, that game was dignified with the appellation of King Pharaoh.

market for their golden harvest. A pair of ordinary boots were worth sixteen dollars, and some, extra thick, with high tops, commanded two ounces or thirty-two dollars; the prices of other articles were in like proportion.

I must now record, as a part of the annals of the summer of 1849, the conviction and execution of another person for murder.

In 1847 or 1848, a young son of Mr. Edward Pyle went to the rancho of Anistasio Chabolla, and spent some time there playing with several boys who were natives. In the play, young Valencia, a nephew of Chabolla, injured the horse of young Pyle, and so much so, that the latter had to borrow a horse of Chabolla, on which to return home. After Pyle had been gone a short time, the remaining boys began to plague Valencia, by telling him how much his mother would have to pay Pyle's father for the injury committed on the horse. It annoyed Valencia very much, and after studying the subject over for a few moments, jumped upon his horse and rode off without observing to anybody his intentions. He overtook young Pyle on the road, threw a lasso over his head, and dragged him some distance on the ground. He stopped a moment, looked around, saw Pyle crawling on his hands and knees with his tongue hanging out of his mouth, and finally concluded the best way was to kill him immediately, and bury the remains. This he did. He, shortly

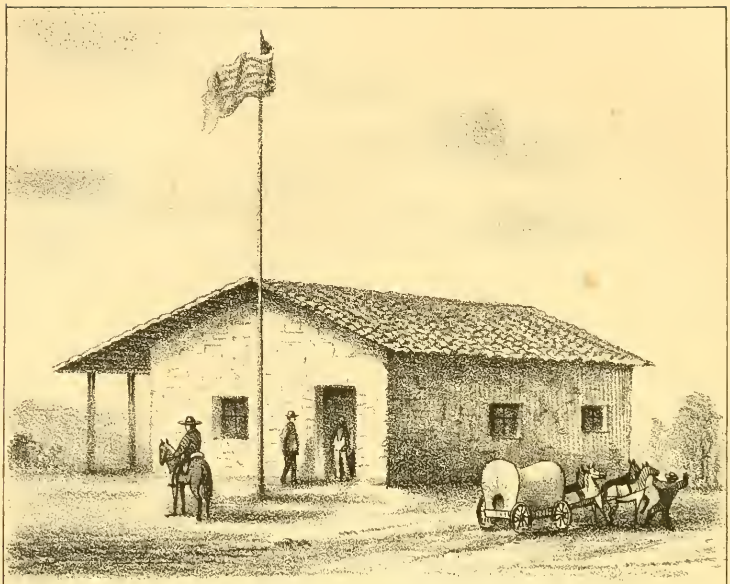
after, told his uncle Anistasio Chabolla, who, it is said, went with the boy to the spot of burial to see if the body had been sufficiently covered to prevent detection. Through fear of that, the remains were reburied. There was a general search made by the people in San José, to find the missing boy. No clue could be ascertained, but the Pyle family believed that the Chabolla family, and some other of their particular friends, knew what had become of the lost son.

In the year 1849, a brother of the deceased Pyle was in the San Joaquin valley, where he met a person whom he believed knew that his brother had been murdered, and by whom. Pyle pointed his gun at the man's breast, and said to him: "If you do not tell me all about the murder of my brother, I will kill you right here." He finally confessed that he knew all about the death of the deceased, and related the facts. Pyle brought him to this valley, and had young Valencia arrested. They also found the remains of the murdered boy; then Valencia confessed the whole matter. He was arraigned before R. H. Dimick, Judge of First Instance, tried in that Court by a jury, and convicted on his own confession, and the other corroborating circumstances.

While he was in the Court-house, subsequent to the trial, apparently not well guarded, a Mexican rode up, jumped off his horse, and exclaimed, not very loudly, that he had a fast horse, if any-

body wanted it; but the boy did not avail himself of the opportunity to attempt escape. Shortly after, he said to an American who was in the jail talking with him about the transaction, that he did not wish to live; that every night he could see Pyle on his hands and knees, with his tongue out, staring at him; that the continual nightly apparition gave him more trouble than there were pleasures in life. He was taken out on Market square, at about its centre, and there, in the presence of Judge Dimick, mounted on horse, the Alcalde, and a crowd of spectators, he made his transition to eternity.

From that time onward, no small number of executions checkered the annals of San José. Indolence, disappointment, a general recklessness of life, and gambling-hells, produced a numerous band of adventurers, who became adepts in the art of theft and murder. Their name in the State was legion; they coursed the roads and by-ways through the land. Their opportunities for escape were exceedingly good, on account of the extent and character of the country. If all had been caught and convicted that deserved the halter, the hangman would have had no reason to complain of inactivity.



JUZGADO– MEXICAN COURT HOUSE.



L. GOODRICH DEL.T

A. L. BANCROFT & CO. LITH.

STATE HOUSE 1849. SAN JOSÉ.

CHAPTER XVI.

1849.

San José Delegates to State Convention.—Influence of White and Reed in making San José the Capital.—Vote of San José for Governor.—Governor Burnett's Family.—Legislative House; Difficulties in Obtaining One; How Obtained; Its Description; Its Destruction by Fire.

THE population had this year become so great, the diversity of transactions such, the ignorance of the Mexican laws so universal among the new comers, the scarcity of these laws, and their inapplicability to the wants of the American people; the impossibility of Congress to make proper provisions therefor in due time, all demanded a State government for the Territory of California. The state of affairs was peculiar, and it required an unusual procedure to meet the actual necessities in governmental functions. Of this fact, among the most intelligent, there were no two opinions. How to govern the people under this extraordinary state of heterogeneity, which was, day by day, increasing, was the all-absorbing question. People met, consulted, and their views were made known to the Military Governor, General Riley. He was by no means ignorant of the condition and wants of the people. He concurred in the views generally expressed; and, therefore, con-

cluded that a State government ought to be formed immediately. In pursuance of this conclusion, he issued a proclamation on the third of June, requesting the people to meet in their respective districts, on the first day of the following August, and to elect delegates to the Convention, to be held at Monterey, on the first day of the following September, to form a State Constitution. The proclamation assigned the number of delegates to be elected in each district, and declared that the Constitution so formed, would be submitted to the people for their approval at a subsequent election that fall. San José sent the following delegates to that Convention: Joseph Aram, Kimble H. Dimick, J. D. Hoppe, Antonio M. Pico, Elam Brown, Julian Hanks and Pedro Sainsevain.

While the Convention was in session, the people of San José held a meeting, at which Messrs. Charles White and James F. Reed were elected as a committee, to proceed to Monterey, and exert their influence with the members, in order to have San Josè fixed in the Constitution as the permanent seat of the government. When the day arrived for the vote to be taken upon that question, the San José members were in good spirits—they had marshaled their forces in good order. Mr. Semple, President of the Convention, and member from Benicia, submitted an arrangement to them, that if they would be satisfied to have the first session of the Legislature at Benicia, and forever

after at San José, the proposition, he believed, could be carried; but it was not in harmony with the San José delegates' views, for they were afraid of the question in that shape. They had promised the Convention to have a suitable building in San José, for the reception of the Legislative body in the ensuing December. As is well known, the vote was carried in favor of the latter place. It required some boldness on the part of the representatives of San José, to make the promise to have a proper building in order, by the fifteenth of December; inasmuch as they had no such a one under their control, and none in the town then completed.

At the election to ratify or to disapprove of the State Constitution, which was held on the thirteenth day of November following, San José district gave five hundred and sixty-seven votes for, and none against, its adoption. The district also gave its vote for Governor, as follows: For Peter H. Burnett, five hundred and seventeen; and for W. S. Sherwood, thirty-six. The Governor was then known as Judge Burnett; he had lived in Oregon, and came to this Territory with a high character for integrity and ability, and, although not personally known to many, as no one man was at that time, yet the few who chanced to meet him were favorably impressed, and their opinion was widely circulated. There was a universal satisfaction with his name, in connection with the guber-

natorial duties; besides he had another recommendation: he had a family, and that fact had an immense influence. His opponent was a bachelor. They circulated the fact that he had two interesting daughters, and that carried a man's convictions immediately with the Judge. Many had been fortunate enough to form their acquaintance, and testified that, although quite young, they were affable, pretty, and interesting. One is now the wife of the Hon. C. T. Ryland, once Speaker of the Assembly, and the other, that of Hon. Wm. T. Wallace, one of the Justices of the Supreme Court of this State. At that time, men stood on tip-toe to get a sight of a female; she appeared as novel as a curiosity shop. Workmen would lay down their tools, run to the door, and gaze with delight at a passing lady. The thoughts of home came to them. They had been months on the road to reach this promised land, had seen no female face, heard the sweet accents of no female voice, and a review of home sights brought reflections, accompanied with sighs.

The residence occupied by the Governor a part of the year 1850, still stands on the east side of Second, and near San Carlos, street. It is one story high, and presents anything but the appearance of an executive mansion. But in those days, indeed, it was no mean form of shelter. He moved into a new two-storied house at Alviso about December, 1850. Many an accomplished gentle-

man was nightly slumbering beneath an ordinary tent, not equal to many possessed by the common soldier of our army. Market and Santa Clara streets had their rows of tents and cloth houses. Some places of shelter were composed of boards and cloth, banked up on the sides with mud. Other streets were about as elegantly adorned, even as late as 1851.

In 1849, Messrs. Sainsevain and Rochon built a large adobe structure, on the south half of lot No. six, block one, range one, south of the base line, which is on the east side of Market square, between the two adobe houses now standing; they intended it for a hotel. It was the most appropriate house for the session of the Legislature which existed in the town at that period. The Ayuntamiento (Town Council), on the petition of the citizens, were about to rent this house for the Legislature, at the rate of four thousand dollars per month; in fact, did make this contract. Upon reconsideration, it was thought better to purchase the building than to pay such an exorbitant rent. Another difficulty immediately presented itself; the owners of the building were unwilling to take the Pueblo authorities as security. The Pueblo did not have the money to purchase, nor credit either to rent or purchase. The responsible and interested citizens saw that they were actually compelled to come to the rescue, financially. The honor of the Pueblo, of the citizens, and of the delegates to the Con-

vention, were at stake. They had represented to that body that the Legislature should be amply provided with buildings and conveniences. Nineteen of those citizens voluntarily came forward and executed a note for thirty-four thousand dollars gold coin, bearing interest at eight per cent. per month from date, until paid. Those citizens were of the following names: R. M. May, James F. Reed, Peter Davidson, Wm. McCutchan, Joseph Aram, David Dickey, Charles White, F. Lightston, R. C. Keyes, Peter Quivy, J. D. Hoppe, J. C. Cobb, K. H. Dimick, Benj. Cory, W. H. Eddy, G. C. Cook, Isaac Branham, J. Belden, and P. Sainsevain.

The deed of the premises was executed by the owners thereof to Messrs. Aram, Belden and Reed, in trust for the purchasers, to be conveyed to the Pueblo whenever it should pay for the same. The Legislature passed an appropriation of fifty thousand dollars to pay for the building. Bonds were issued for that amount and for that purpose, bearing interest at two and a half per cent. per month. The credit of the new State was not considered equal to coin in hand. The bonds were sold at the rate of forty cents on the dollar. The amount received from the sale theroof was applied in liquidation of the note given, leaving considerable of the indebtedness unpaid. To enforce the payment of the remainder, suit was instituted against the

city; all which further proceedings in relation thereto will fully appear in Appendix No. 4.

I shall now describe that building, because it is associated with many facts interesting to all in the State. It was the hall where was gathered the first Legislative Assembly on the Pacific coast; it was the hall where the first gubernatorial message was read to the representatives of the people; it was the hall where the first State machinery was put in motion; it was the hall where the State was first divided into counties, cities, and towns; it was the hall where the first Senators were elected to represent the new State in the Federal Legislature of the country; it was the hall where the great and long-established principles of the common law of England was first made the rule of decision here. I have given an engraving of that building, that the visual may assist the mental organs, beyond what verbal illustration can depict. Ordinary as the structure may seem for the purposes of its occupancy, it is not without its usefulness, in aiding the mind to form a correct history of the contemporaneous character of the general improvements of the country.

This building was sixty feet long, forty feet wide, two stories high, and adorned with a piazza in front. The upper story contained but one room, with a stairway leading thereto. This room was occupied by the Assembly. The lower story was divided into four rooms. The largest one was

forty by twenty feet, and was the Senate chamber. The other rooms were used by the Secretary and various committees. The building was destroyed by fire on Friday, the 29th day of April, 1853, at about four o'clock, A. M. Whether it was by the hand of an incendiary or not, is unknown.

In front of it stood a liberty-pole, the top splice of which was the same that stood before the Juzgado, bearing the ample folds of the first United States colors which wafted in this valley. This same top splice forms the upper part of the pole now in front of the engine house on Lightston alley. The gilt ball at the top contains a written history of the facts pertaining thereto.

CHAPTER XVII.

1849-50.

City Hotel; Its Character.—Mansion House; Its Character; Tricks Played Therein; Its Destruction by Fire.

How many thousand upon thousand times has the expression, "The Winter of 'Forty-nine, and the Spring of 'Fifty," fell from the lips of Californians? And how many whose fortune, ill or good, it was to have been in California during that period, do not now recount those by-gone scenes, as though they had their existence in a dream-land. Who does not look back on those checkered portions of his life, with wonder, some with delight mingled with sorrow? What a mighty school it was for the study of human nature! Lessons were taught and learned in every department of that study; some that were pleasing to the noblest mind, and some revolting, even to the most calloused of human wretches. The canopy of heaven was the only tent spread over the slumbering heads of thousands; some sheltered by canvas, had sheetless, nay, blanketless beds, some no beds at all. While thousands were thus without the actual comforts of life, others were burdened with the very weight of their golden harvest. To them, a few short months had yielded more than a long life of

toil had to others. California itself was indeed a miniature world. In fact, many a town, hamlet and camp was one on a smaller scale. The population was a mosaic work, formed from pieces of humanity picked from every nation on the habitable globe; and they stood in bold contrast, one with the other. Some of the most polished of the human form were set by the roughest. San José was not an exception, she exhibited the same artistic and unartistic classification of the human race. But, being the capital of the State, there was a large majority of the better class here. It then appeared, as it has since, as though each man was for himself. A hungry man at a hotel, waiting for the gong to declare "dinner ready," was not over polite in insisting upon any one eating before himself.

At the opening of the session of the Legislature, the principal hotel of San José was known as the City Hotel, situate on the west side of First street, and between Santa Clara and St. John streets, and about opposite the brick stable, now standing, and owned by Patrick Welch. It was a frame building, one and a half story high. The table was remarkably good,—equal to many of the present day. Vegetables were the scarce articles. Although very good, the boarding was expensive. The price was five dollars in gold per day; that is, board and lodging. The sleeping apartments were not equal to the eating; in fact, the house was not

sufficiently large to accommodate one half, nay, one fourth of the boarders; the dining-room and bar-room floors were used to stretch out the weary eaters at night; not only occasionally, but regularly as the night came, and no deduction of price was made because a boarder was kind enough to get so low down. Whether a man had rest d on the floor, or on the best bed in the house, he soon found that, although not caring much for a great deal of, or very elegant furniture, yet, he did deem it absolutely necessary to have about him a pocket comb; and when he was about to purchase that article, he never for a moment doubted whether to take a fine or coarse one. He found joint-tenants in that house, which claimed and took possession, though not registered; nor could they be ejected by the law, except the law of self-preservation. If a man scratched his head, nobody for a moment supposed it was for an idea. If there were no ideas running in his head, there were other subjects that attracted his attention. It was a hazardous undertaking to attempt to eat at the first table; the rush was so great, that crowding through the dining-room door, put one in mind of trying to drive a four-horse team through a single door of a stable.

A dinner cost two dollars, a good bed for a night's lodging the same; but one could obtain a cot, or bunk with blankets, one night, for one dollar. Eggs were worth fifty cents each, vegetables of all kinds

were scarce and high; potatoes were the principal vegetables eaten, and the only class that appeared to be found at all times; a few onions at twenty-five or fifty cents each could be had. Beef and mutton were the only meats, with the exception of, now and then, chickens, wild duck, rabbit and squirrels, at high rates.

The hotel known as the "Mansion House," was situate on the east side of First street, where the newly-erected building called the "Music Hall," now stands. It was commenced in 1849, and ready for use by the fore part of 1850, some time in February. It was built by Joseph S. Ruckle, at a cost of about one hundred thousand dollars; the principal materials of the walls were adobes. It was two stories high, with a piazza in front, and a wing in the rear used as the dining-room. It was really a stylish hotel for California in those days, and the table was exceedingly good, considering the difficulty in procuring requisite articles for food. The prices were of course correspondingly high. It was *the* hotel of the town, and equal to for most any in the State. It contained a large and noted fireplace; noted because it was so large; it was the topic of conversation by every traveler who chanced to place himself before it in a winter's night. There you saw the big back-log, wrapped in lurid flames, and as you sat there on a winter's eve, gazing into its brightness, listening to its roar and the beating rain without, and feeling perfectly

comfortable, your thoughts would involuntarily carry you back to your eastern home, where and when you once formed one in the family circle around the hearthstone, and heard the merry laugh mingled with the wintry blast. There were no railroads, no telegraphs then, to bring you news with lightning speed, it came only every twenty-five days by steamer. And how often did men sit and gaze at that fire, as with a vacant stare, and wonder if the next steamer would bring the sad news, that Death had gathered a victim from among their loved ones in the far-off East? Who does not remember the big andirons placed subsequently in that fire-place, by Mr. Abe Beatty? Andirons that weighed two hundred and twenty-four pounds. Their weight was so deceptive, that many a bet was made on them, and many a glass of liquor drank at the expense of the loser.

If all the amusing incidents could be recounted which transpired in that hotel, they would fill a volume of interesting matter. There was many a joke told as a bottle lost its cork; many a trick played which made the air ring with laughter; and the spirits hovered in and out of the jug, like fairies in a midsummer's eve. I cannot refrain from relating one trick, as it appears too good to be lost: Judge Watson, the first District Judge of this district, was exceedingly fond of a joke—particularly if it were fastened on some one besides himself; but to do him justice, I will say that,

when the laugh was on him, he bore it with a becoming grace. He was as full of humor and wit as he was of law. I will not gauge either. In 1850, the Judge wore a beaver which then cost sixteen dollars. Among his acquaintance were Ben. Lippincott and George McDougal, both of whom were full of wit, and of quick perception. Now, Lippincott was a noted shot on the wing. On one occasion, the latter two went out on a hunt, and while absent, set a trap for the Judge. They loaded their guns with a double charge of powder and shot, the charges being put in separately. On their return to the hotel, they placed their guns behind the bar. McDougal observed the Judge in the back-yard, at the washstand, washing his face and hands, went out to meet him, and washed his own hands, so as to make it appear that they met by chance. McDougal remarked to the Judge that Lippincott thought himself very smart, and that he thought he could play the d——l at shooting. But says Mc.: "Judge, I think we can fix him. Now, you and I will withdraw the charge out of his gun and mine too, and then you bet him a box of champagne that he can't hit your hat when you throw it up in the air." That was just the thing for the Judge—nothing had pleased him so well for a long time, for he would have preferred to catch Lippincott by a trick than any one else he knew. The Judge was full of ectasy—he smiled all over—in fact, his face was as bright as

a gilt globe on a liberty-pole. He and Mc. withdrew a charge from each gun. Then the Judge sought Lippincott, and said : "Ben, are you ready to try your skill? You are pretty good on the wing; but, good as you are, I will bet you a box of champagne that you can't take your gun now and hit my hat as I throw it up." "Judge, I'll take that bet," said Ben. Out went the party, followed by a crowd, some of whom were in the secret. Up went the hat, crack went the gun, through the hat went the shot, and a long and loud shout went from the crowd, which made the welkin ring. On the swarthy face of the Judge an expression of awe and amazement sat enthroned, causing him to appear for a moment as though he had forgotten that he had an observer; but, quick as the shifting of a theatrical scene, his countenance changed, and he joined then in concert with the hearty laugh of the crowd. The Judge thought himself badly sold—he really thought it a large sale; not so much in real merchandise, although the hat and champagne cost money in those days; but he was sold in feeling—it was no small amount of chagrin that he suffered to think that Ben. Lippincott should sell him, after he had supposed the trap so well set for Ben himself. This trick made a sore place in the Judge, and it was a long time before he entirely recovered.

To complete the episode on the Mansion House. I will state that Mr. Abe Beatty took possession

of it in 1853, and kept it many years. His first breakfast in it was on the fourth of March, of that year. Beatty even prides himself on that breakfast to this day. He tells now that people not only ate it with a gusto, but that they talked about it long afterwards. He paid seventy-five cents per pound for salmon, to please the palates which surrounded that bountiful table. Cost was not considered—palates only.

That Mansion House, which was a pleasant mansion to many, for a long time, was consumed by fire, at three o'clock, on Wednesday morning, May 31st, 1865.

CHAPTER XVIII.

1849–50.

Legislature.—Governors.—Candidates for United States Senate; Their Election.—Bill to Remove Capital.—Party given to Legislature. Pueblo Grants.—Governor's Proclamation prohibiting Grants.—Delegates from Deseret.—Ayuntamiento.—Trial before Court of First Instance.—District Court.—Amusements.—Gold Excitement. —Fourth of July.—Escape of Hernandez.—Crimes.

On Saturday, the fifteenth of December, 1849, the first Legislature of the State met. The Assembly occupied the second story of the State House; but the lower portion, which was designed for the Senate, not being ready, the latter body held their sittings for a short period in the house of Isaac Branham, situated in the southwest corner of Market plaza. Only six senators were present the first day.

On Sunday, Gov. Riley and Secretary Halleck arrived. On Monday nearly all the members were present.

There was some dissatisfaction in regard to the legislative building, and the accommodations generally, in the town. Many expressed a desire to remove the Capital from San José, immediately. On the 19th, Geo. B. Tingley, a member of the House from Sacramento, offered a bill to the effect that the Legislature remove the Capital to Monterey.

The bill passed to the first reading, and was laid over for further action. On the twentieth, Gov. Riley resigned his gubernatorial office, and by his order, dated "Head Quarters Tenth Military Department, San José, Cal., December 20th, 1849, (Order No. 41,)" Capt. H. W. Halleck was relieved as Secretary of State. On the same day, Governor Peter H. Burnett was sworn in office, by K. H. Dimick, Judge of the Court of First Instance.

There were several gentlemen in town who were perfectly willing to serve in the United States Senate, for the benefit of California. On the twentieth, Col. J. C. Fremont received a majority of six votes, and Dr. Wm. M. Gwin, a majority of two.

On the following day, Gov. Burnett delivered his message, at twelve o'clock, M. It would have been difficult at that day to have found any town in the State which possessed all the conveniences of life. Yet, not a day passed that some growling was not heard, by those within the Legislative department, as well as many without. The complaints were not all justly founded, considering the state of the country. And those who made them were hoping to have the removal of the Capital to some place, where they would be pecuniarily benefited. All the complaints were not in favor of a removal, unless it could be to the place which they had respectively selected. And as there were several places in the minds of the different members, each thinking his own the best; the differences of opin-

ion favored San José. The citizens, knowing of the complaints, and that it was necessary to do all that could be done to content the assembled wisdom of the State, made a great move for a party. And Thursday, December 27th, was announced as the night for the grand ball. It was given by the citizens to the Legislature, in the Assembly Hall. Ladies were scarce, and of course, the country was raked for Señoritas. There was a large number of females; one wondered whence they came. Nevertheless, they came, saw, and were seen, danced and drank.

Now and then was given a sly wink of the eye, between some American ladies, and between them and a friend of the other sex, as the señoritas in the whirl of the dance showed their red and their yellow flannel petticoats. If the natives were not so fashionable in their under or outer dress, they were certainly graceful in their motion, and were rather entitled to the palm over their new and whiter neighbors of the same sex.

The dance went on as "merry as a marriage bell." All were in high glee. Spirits were plenty; some hovered where you saw them not, but the sound thereof was not lost.

It is well known to the early settlers of this State; that the first Legislature received the appellation of the "Legislature of a thousand drinks." With no disrespect for the members of that body, I never heard one of them deny that

the baptismal name was improperly bestowed upon them. They were good drinkers—they drank like men. If they could not *stand* the ceremony on any particular occasion, they would *lie* down to it with a becoming grace. I knew one to be laid out, with a white sheet spread over him, and six lighted candles around him. He appeared to be in the spirit land. He was really *on* land, with the spirits in him—too full for utterance. But to do justice to this body of men, there were but a very few among them who were given to drinking habitually; and, as for official labor, they performed, probably, more than any subsequent legislative body of the State, in the same given time.

In the Senate-house there was many a trick played, many a joke passed, the recollection of which produces a smile upon the faces of those who witnessed them. It was not unfrequently that, as a person was walking up stairs with a lighted candle, a shot from a revolver would extinguish it. Then what shouts of laughter rang through the building at the scared individual! Those who fired were marksmen; their aim was true, and they knew it.

The pay of the members was sixteen dollars per diem.

The respective candidates for the United States Senate kept *ranches*, as they were termed; that is, they kept open houses. All who entered drank free, and freely. Under the circumstances, they

could afford to. Every man who drank, of course, wished that the owner of the establishment might be the successful candidate for the Senate. That wish would be expressed half a dozen times a day, in as many different houses. A great deal of solicitude would be indicated just about the time for drinks.

Soon after the installation of the Goveror, he had been informed of the frequent grants made by the Pueblo authorities of the municipal lands; and at prices, too, which did not justify such generosity on the part of those who should have been the guardians of the citizens' right in those lands. Pueblo lands had been granted for a song. And it was evident that, although the Pueblo had had a large extent of land, the probability was that it would not long retain enough for building purposes to meet the demands of the Pueblo itself, in the way of public grounds. The Governor, therefore, in order to protect the Pueblo, issued a proclamation, on the second day of January, directed to the Prefect, that he might lay the same before the Ayuntamiento (Town Council,) and have it placed among their records, which is as follows:

"Prefect's Office.

"To the Illustrious Ayuntamiento:

"Gentlemen:—His Excellency the Governor has forwarded to me an order, of which the following is a copy:

"Whereas, it hath been represented to the undersigned, Governor of the State of California, that there are many portions of the municipal lands of the Pueblo de San José that have not yet been sold or granted to individuals; that the said lands are far more valuable than the price required to be paid by the existing laws; that some of said lands may become most important as sites for public buildings hereafter to be erected; and that if said lands were sold to the highest bidder, a large amount of municipal funds could be raised for this use of said Pueblo.

"Now, therefore, I, Peter H. Burnett, Governor of the State of California, in the name and by the authority of the people of said State, do order and declare, that no further grants or sales of said land shall be made by the Ayuntamiento and Alcalde of said Pueblo de San José, or by either of them, or by any other authority, until the further order of the executive of said State; or until the Legislature of said State shall have passed some Act in reference to said lands.

"In all cases where the Ayuntamiento has ordered any of said lands to be granted by the Alcalde, and the grants have not been completed, they shall also be suspended until like further order, or legislation by the competent authority.

"You will cause this order to be communicated to the illustrious Ayuntamiento, who will place the same upon record in their office.

"Given under my hand, at the Pueblo of San José, this second day of January, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fourth.

"PETER H. BURNETT, Governor of Cal.

"ANTONIO M. PICO, Prefect."

Early in January, 1850, two delegates appeared here with a somewhat novel petition, purporting to be an expression of the people of the new "State of Deseret;" wherein they requested that Deseret might be included within the State of California. The residents in Great Salt Lake Basin had held a convention in March, 1849; formed a constitution, and approved the same by the popular vote. They subsequently learned that the people in California were about to send delegates to a convention to form a State constitution, and they deemed it advisable to be represented in that body; therefore, they chose ten delegates for that purpose. On their arrival in this State, they learned that the State Convention had adjourned. They were anxious that another convention should be held here, to take into consideration the proposition of the people of Deseret. They, at least, desired that the convention might be again called, if for no other purpose than to include within the boundaries of the State of California, the Great Basin. Governor Burnett could

not see any benefit which would accrue to California by such a movement, and, therefore, he recommended the Legislature not to comply with the solicitations of the Deseret delegates. Thus the matter ended.

The Ayuntamiento (Town Council,) of San José, were not as large a body as the Legislature of the State, yet the land of the Pueblo over which they exercised control, was extensive; and, in fact, according to the decision of the United States Court, and the survey, the Pueblo lands embrace as much, and even more, than some of the European Principalities. Whether it was the importance of the landed estate of the Pueblo, or the importance which the members of the Ayuntamiento placed upon themselves, I know not; or, whether it was the arduous duties assigned them, which caused them to decide that their services were as valuable to the Pueblo, as those of the legislators to the State; nevertheless, be their opinion as it may have been, they were not to be measured in their pecuniary value, by a less standard than that adopted by those legislators. They voted themselves sixteen dollars per day. Dr. Benjamin Cory (now of this city), was a member of that illustrious body; but the Doctor was not so avaricious in his declaration as the majority. He voted that the members should serve without any pay. The majority having carried the resolution in favor of the sixteen dollars *per diem*, objected that the Doctor should

receive his pay, after voting against the resolution. The Doctor considered that he had carried the notion of economy far enough by his vote, and, inasmuch, as the other members were receiving their pay, he deemed it his duty to act in accordance with the tenor of the resolution as adopted. He, therefore, insisted on, and received his pay likewise.

Receiving so much pay which came from the citizens of the Pueblo—not in scrip as the legislators were paid—but in gold, they, I presume, made some pretensions to be watching over the welfare of the Pueblo. They doubtless believed that they could in no way better exhibit that watchfulness, than to turn their attention to the landholders under Pueblo grants. And, as the Five-Hundred-Acre titles were conditional grants, they ascertained that the conditions, in most instances, had not been complied with. They, therefore, on the eleventh of February, 1850, passed a resolution, declaring them forfeited. As far as is known to any living mortal, no good or evil ever resulted to any body by the passage of this act of forfeiture.

On the twenty-ninth of March, 1850, the Legislature elected District Judges for the State. John H. Watson was elected as Judge of the Third District, which includes the county of Santa Clara.

On the twenty-seventh day of March, an act was passed incorporating the City of San José. And

on the eleventh day of April, 1850, the Ayuntamiento held its last meeting.

The Common Council, under the new charter, assembled for the first time on the thirteenth day of April.

The Court of First Instance held its last session on the 30th of March, 1850. A somewhat noted case was tried in this court, not long before its final termination. There was a suit instituted for the possession of a mule. His honor, Judge Kinkaid was on the bench, and John Yontz acting Sheriff. There was considerable excitement during the trial, (which was by a jury,) on account of the fact that about a dozen witnesses on each side, swore diametrically opposite to each other. The fact was, there were two mules which resembled each other so much, that a man seeing one of them in one place, and the other in another place, would naturally believe they were the same animal. The character of the witnesses on both sides stood high, and thus the astonishment. Finally, the mule in dispute was brought to the court-house, and there the hair was shaved off on the left hip where the brand was. This solved the mystery. Yontz asked the Court if he should bring him in. "Yes," says Judge Kinkaid, "Mr. Yontz you will bring him in;" the Court supposing he meant a witness. In came Yontz with a very sober face, and with the mule, which was no small-sized one, for it took all the room to turn around

in. The Judge looked with suprise at that mulish parade, and with a good deal of indignation, exclaimed, "Mr. Yontz, take that mule out of here, sir; what do you mean, sir, this court will fine you sir, for contempt!" "But, your Honor," says Yontz, "ordered me to bring him in, and I obeyed the order." "Yes sir, Mr. Sheriff, you know better than that; this court will fine you for contempt!" Thus talked the Judge in no very good humor. No one can depict verbally the scene; and no one can appreciate it well who did not know the parties. The sober and full face of the facetious Sheriff, the withered face of the Judge, his whining voice, his peculiar disposition, and the look of the motley crowd, most or many of whom, knew Judge and Sheriff; all are necessary to rightly enjoy that novel court scene. This trial and the old Juzgado in which it took place, will have a place on the same shelf in the memory of many of the bystanders.

The District Court, first opened its term, on the twenty-second day of April. John H. Watson, Judge, and John Yontz, Sheriff. The first case tried was that of Clemente Penaud vs. Ramon Hurtado, Antonio Laman, Francisco Ballesteras, and Joaquin Bennetez. It was a case in equity, for the foreclosure of a mortgage given to secure the payment of five thousand dollars, with interest at eight per cent. per month. This suit gives evidence of the financial transactions of the times.

The almost nightly amusement was the fandango (dance). There were some very respectable ones, and some which, at this day, would not be called very respectable. The term might be considered relative in its signification. It depended a good deal on the notions of the attendant at such places, and a good deal on the spirit of the times. Those fandangos, where the men kept their hats on, and treated their partners after each dance, would not at the present day be considered of a high-toned character. There were frequent parties where a little more gentility was exhibited. In truth, considering the times and country they were very agreeable. The difference in language in some degree, prohibited a free exchange of ideas between the two sexes, where the Americans were in excess. But then, what one could not well say in so many words, he imagined, guessed, or made signs; and, on the whole, the parties were novel and interesting.

The grand outer-door amusements were the bull and bear fights. They took place sometimes on St. James, and sometimes on Market Square. The bear did not always figure. Generally, the bulls and the Spanish experts entered the arena. Some of the performances were exceedingly good. The actors were adepts, and showed great activity, and a want of fear. Now and then, an Indian boy, who had been raised on the ranches where cattle abound, fancied that he

could display as much agility as the fantastically dressed expert; and, after the chief actors had concluded their task, the Indian would begin his display. He would, probably, dodge the bull a few times without receiving a scratch; but, before his final exit, he would be thrown higher than the bears in Wall street, and usually came down feeling physically worse.

The bear and bull fights were not altogether without interest. When a huge, hungry bear of a thousand pounds weight, entered the arena, and was chained, and the wild bull let out of his darkened stall, the scene became exciting. The savage and quick dart of the bull, the stern look of the bear, with his huge paw ready to grapple the advancing enemy, produced silence and attention. An encounter was terrific and bloody. The bear seemed to watch for his chance to fasten upon the tongue of the bull; for, when that hold is obtained, the bull becomes the prey of the bear. In area, the bull had the advantage, as the whole arena was subject to his roam. The bear being fastened with a chain, had but about fifteen feet to circle in. Sometimes the contest was about equal; but, generally, the bear, if not first exhausted before entering for the affray, was victorious. Such were the sports of Spanish and Mexican entertainments. As many who have recently come to this country, and others who have never been here, know nothing about the method of catching the grizzly bear, it

may not be uninteresting to read something pertaining thereto. The Mexicans are not noted for their accuracy in rifle-shooting, and they were not accustomed to hunt the bear with rifles. Whether they desired to preserve the life of the bear after he was taken or not, they had but one way to hunt him. Usually three or four hunted together, on horseback, with lassoes. They carried fresh meat, or killed a bullock near the habited place of the bears, and watched for bruin's appetite and scent to bring him to the desired spot. While the hungry animal was making way with his repast, the Mexicans advanced with lasso in hand, and, when near enough, one was thrown over his head, and quickly drawn in so as to choke him. Another Mexican came to the rear, and, as the bear advanced, endeavored to throw another lasso under one of his hind feet; and, if successful, he pulled back, while the one who held the lasso which was around the neck of the bear, pulled in the opposite direction. Thus bruin, being held between two taut ropes, was rather helpless. The third man then dismounted, and firmly tied the feet of the bear together. He was then secure, and, in order to bring him to town, he was put upon a dry bullock-hide, or a cart, and drawn by oxen. It requires a good deal of nerve, and good horses, to play thus with the grizzlies. Many an American who considers himself a good shot, would not seek the employment of catching live

grizzlies. The lasso, although familiar to all Californians, is not so to all Americans, and, as familiar as the Californians are with its use, they may not know its antiquity. It was used by a pastoral people, who were of Persian descent, and of whom eight thousand accompanied the army of Xerxes.*

Sunday was the usual day for bull fights. Sunday, February 3d, the people of San José were entertained by a great exhibition of a fellow-man putting himself on a level with a beast. I suppose the bull stood the *highest*, when he raised himself to his utmost dignity.

On Sunday, the third of March, there was a good deal of amusement mixed with a good deal of excitement. It was reported all over the valley that gold had been discovered in the bed of the Coyote Creek. There was a general rush. Picks, shovels, crow-bars, and pans had a large sale. Members of the Legislature, clerks, waiters, concluded suddenly to change their vocation. There was no situation which brought ordinary pay that would induce them to keep away from the Coyote creek. The gold was there, and they intended to have it. Twenty-four hours' time brought pickaxes *down*—some into the ground, and all in price. The distance to the diggings was too short to keep up the excitement. Half of the people who went would not own it; and the time necessary to go

*Remel, on the 20 Satrapies of Darius, Hystaspes p. 287.

and return was so short, that it was not easy to prove it on all of them.

The next great excitement and amusement was the race between the Sonoma horse and Andres Pico, on Monday, April 1st. The race took place in the southeast part of town, about a mile from the Plaza. The wager was ten thousand dollars. The Sonoma horse was victorious. There was a large attendance, and a good deal of excitement, necessarily from the amount of the wager.

Fourth of July.—The first anniversary of our Independence was not forgotten here. There was a grand celebration, and as much and more interest felt than on such occasions in the Eastern States. The isolation from the other States made the feeling of national pride increase. We felt as though we were in a foreign land; and the tendency was to brighten and to vivify the love of the whole country in every American. On that occasion, the Hon. William Voorhies delivered the oration. James M. Jones also delivered one in Spanish, for the benefit of the Mexicans present. Mr. Sanford, (lawyer, from Georgia,) read the Declaration of Independence. Thirteen young ladies, dressed in blue spencers and white skirts, rode on horseback, followed by the "Eagle Guards," commanded by Captain Thomas White; also, five hundred citizens, some on horseback, some in carriages, and some afoot, made up the national pageant, that wound its way to the south of the town, a mile or

more, in the grove near the Almaden road. And there the ceremony was performed, to the great pleasure and pride of the American settlers in this new country.

The greatest excitement of this year was the escape of Mariano Hernandez. He had been indicted in one of the upper counties for the murder of one John Foster, whom he robbed, it was said, of about twenty thousand dollars. Report said that he had also murdered another man. One Billy Savage, who was a friend of Foster's, came to San José with a writ of arrest to take Hernandez to the county wherein he had been indicted. He had been arrested and placed in jail. To complete some transaction between Hernandez and Mr. White, it was necessary that the former should sign some papers. A writ was issued by Judge Redman, commanding the Sheriff to bring the said Hernandez before the Judge, for the purposes aforesaid. Mr. Yontz, as Sheriff, brought the prisoner out of jail, in obedience to the writ. On the road from the jail to the office of Judge Redman, the prisoner escaped. Judge Redman, in walking out, met Savage near the corner of Santa Clara and First streets, and said to him: "The bird has flown." "What do you mean?" said Savage. "I mean that Hernandez has got away," observed the Judge. Savage, boiling over with wrath, exclaimed: "The man who let him go has got my money!" Savage had previously

said that part of the money in Foster's possession when murdered, belonged to him. The next day, an indignation meeting was held on First street, almost opposite the Mansion House. Threats were made against the County Judge and the Sheriff, more particularly the latter, as he had the prisoner in charge when he escaped. Some were in favor of hanging both Judge and Sheriff; others counseled peace. Finally, the meeting adjourned without committing any violence. Public opinion was divided on the question of the guilt of the Judge and Sheriff. But Savage kept up his fury; and he declared he would bring his Indians into San José and sack it. Some fears existed lest he might attempt to carry out his hellish purpose. He had been living with the Indians, had married a squaw, and had great influence with them. The people began to look about to ascertain what arms were available, in case of need. The police-officers procured the services of Harry Bee, to lead them over the eastern range of mountains, in order to acquaint themselves with the passes and general topography of the country. Also, to learn, if possible, the probable route of Savage and his savage companions. Fortunately, the citizens heard no Indian yells, saw no scalping-knives, and felt no bearded arrows. Fears were allayed, nerves became quiet, for it was believed that the tomahawk was buried somewhere; but, as none of the citizens

were at the burial, the exact location was as much unknown as the sepulchre of Moses.

Crimes were numerous. It was not safe to travel nights without being armed. The country was so sparsely settled that it was difficult to catch criminals. Every few days some one was murdered in the valley. A Mexican was murdered about three miles from town, near Mr. Kell's, on the Almaden road. Much excitement was created by the murder and arson committed on Sunday, December 15th, in Mr. Bester's house, west of town, and near Los Gatos creek. E. G. Baker, Digby B. Smith, and Mr. Wood, were murdered and their bodies burned. About seven o'clock that evening, their neighbor, Mr. Hamilton, heard a noise, and soon thereafter, saw the house in flames. It was supposed that the murdering party were anxious to kill Mr Bester; but he was not at home that evening. The funeral sermon over the remains of the deceased, was preached by the Rev. Mr. Brayton, in the Presbyterian church, just finished. It was the first sermon preached in that house, which stood where the brick one now is.

CHAPTER XIX.

1850–1851.

Roads, Travel and Stage Fare.—Railroad Meeting.—Newspapers; "State Journal;" "San José Daily Argus;" "San José Weekly Visitor."—Improvements, 1850.—Churches.—Schools.—Cholera.—Legislature, 1851.— State Scrip.—Removal of Capital.—Dullness of the City.—Crimes and Executions.—Meeting for Division of State, and Delegates Elected.—Court-House.

THE roads were exceedingly bad in every direction during the rainy season. They had not been worked, nor could the city or county afford to work them much. The amount of work necessary, at this early day, to make the roads on low land passable, and the high prices of labor, were sufficient reasons why the authorities could not indulge the citizens in the luxury of graded and graveled roads. The road to Alviso was very extensive in width; in fact, all the roads were, as there were no fences. It was fortunate that travelers had so much territory to roam over. No one track could have been traveled long, as the ground was so soft that the wheels soon sank to the hubs. Messrs. Ackley & Morrison established a tri-weekly stage to San Francisco, in April, 1850, making the trip in nine hours. In the spring of 1850, John W. Whistman put on a stage line to San José; the price of fare was thirty-two

dollars, or, as the expression then was, two ounces; shortly before, by way of Alviso, it was thirty-five dollars. In September of that year, Hall and Crandall purchased the line of Whistman. That road in places was so muddy that passengers never failed to have a little pedestrian exercise. The road to Santa Clara, through the Alameda, was impassable for about four months in the year. A circuit of five or six miles was made to reach that town during the wet season. Santa Clara street, between First and Market, was very muddy; and, at the corner of Market and Santa Clara, there existed a pond of water, called the "Hoppe Pond," from the fact that it was in front of his house. At the junction of Santa Clara and First streets, on the west side of the former, there was a low place, usually filled with water in the winter.

The road became so bad to San Francisco, that in the winter of 1850–1, the stages were withdrawn, and the mail and passengers went by Alviso. The stages to that place connected with the two steamboats, *Wm. Robinson* and *New Star*. It was not, unfrequently, that people, in their own conveyances, got lost on the road to San Francisco, if they traveled after dark. There were no fences to guide them, and, if the fog came up, they were almost sure to lose the road, and often find that they had traveled in a circle, and were at last compelled to remain stationary until morning.

A railroad meeting was held here January 26th, 1851, when resolutions were adopted to open books for subscription for a railroad from this city to San Francisco. Calculations were then made as to the amount of money paid out for the transportation of passengers and freight over that route. The following estimate was made for the seven months preceding the first of February, 1851: Ten thousand and five hundred passengers, at sixteen dollars each, (the price of fare at that time), making one hundred and sixty-eight thousand dollars; besides two million feet of lumber to Alviso, at fifteen dollars per thousand. Several subsequent meetings were held, and, by the fourth of July, about fifty thousand dollars had been subscribed. By the last of December, the road had been surveyed by Wm. J. Lewis, civil engineer, and a report made thereof, which was published December 26th. The cost of the road was then estimated as follows: Construction of road, $1,385,726.17; buildings and fixtures, $49,000; running furniture, $104,400; total, $1,539,126.17.

In July, 1851, the fare was reduced to San Francisco from sixteen to ten dollars; and to Monterey twenty-five dollars, on the semi-weekly line of stages owned by Hall & Crandall.

The first newspaper ever established and printed in this valley was the "State Journal," a semi-weekly, edited by James B. Devoe, and first issued on the nineteenth day of December, 1850.

The main object of this paper was to elect James M. Crane to the United States Senate. Fremont had been elected for the short term the year before, and, as his term would expire within another year, many were in favor of taking time by the forelock, and during the session of 1851, provide for the next senatorial term. Fremont was likewise in the field again, and he had his journalistic organ, which was the San José "Daily Argus," the first number of which was published on Saturday, the fourth day of January, 1851. The proprietors were Messrs. C. M. Blake & Co., Mr. Blake being the editor. This was the sixteenth paper published in the State, and the third Democratic one.

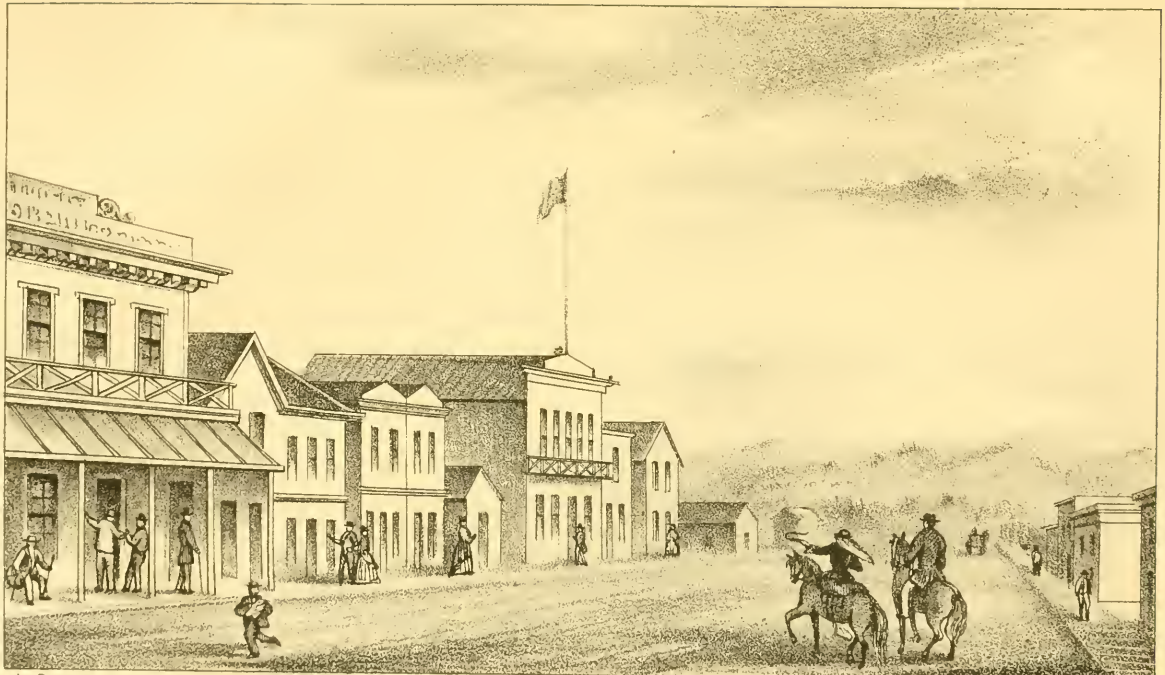
Neither of these journals remained long after the adjournment of the Legislature, in the spring of 1851.

The first permanent journal was the "San José Weekly Visitor," the first number of which was issued Friday, June 20th, 1851, and the last on June 4th, 1852. Messrs. Damon, Emerson & Jones were the publishers for the first six months, when Damon's name was withdrawn. Mr. J. C. Emerson continued the publication, with A. Jones, Jr. as editor. The "Visitor" first sailed under Whig colors; but in October it came out with a notice that thenceforth it would be Democratic. Probably, the political tincture was not deep; the change was on the ground, doubtless, of even-handed jus-

tice, as there was no other paper in the county, its proprietors considered that to do justice, it should talk a little for both parties before the year expired. The office of this paper was on the west side of First, south of and near Santa Clara street.

The fantastic-looking structure, on the east side of San Pedro street, formerly called the Pavilion, and subsequently the United States Hotel, was erected this year. The frame was made in Australia. Its cost, after its completion, amounted to about fifty thousand dollars. Mechanics obtained sixteen dollars per day for their labor at this period. This building never was made profitable; its location was disadvantageous.

The large two-story building on the west side of Market, near El Dorado street, was built this year by A. Chatêlle, at a cost of nearly fifty thousand dollars. It was called the French Hotel. It was occupied, principally below, for gambling, and was crowded nightly. Many thousands of dollars changed hands in that building. It was *the* gambling establishment of the town. Pretty señoritas smiled their loveliest, and the band discoursed its sweetest strains, to allure the passers-by to walk in, and try their fortune at the game of chance. The greatest variety of games was presented; and no one who desired to try his luck on the turn of cards, or any game of chance, need have left on account of the mode of operation. Every



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SANTA CLARA STREET 1851

style could be had, with greater certainty than every style of cooking at the restaurants.

A very fine adobe building was erected by J. D. Hoppe, on the northeast corner of Market and Santa Clara streets. The adobes of which this house was constructed came from the Juzgado (Court-house), which was torn down that year. This building of Mr. Hoppe's was two stories high, and elegantly finished, inside and out. The exterior surface was painted and penciled in squares, in imitation of stone. The lower story was used as a store, in which Hoppe had an extensive assortment of goods. He occupied the upper story as a dwelling-house. The cost of the building was twenty thousand dollars. It was the most elegant edifice in the town or county, when completed. It was erected under the supervision of Levi Goodrich, as architect.

Mr. Goodrich also built for Frank Lightstone the two adobe one-story buildings, now standing nearly in front of the Auzerais House, on Santa Clara street.

The house now owned and occupied by Mrs. Samuel J. Hensley, was built by O. L. Crosby.

Wm. Van Voorhies (then Secretary of State), built the cream-colored frame building on Third street, near William.

The first Court-house, under the American system of laws, was built on the west side of First street, a little south of the Archer building, and

opposite the Archer alley, leading to Second street. The lower part was adobe, and used as a Courtroom; the upper part was frame, and used for offices; the Clerk's office was below, in the north end.

Messrs. May, Lee, and McCune built the hotel now called the Morgan House, on the corner of First and San Fernando streets. May kept a boarding-house there for several months. On the fourth day of December, 1851, John R. Price opened it as a hotel, which he kept as such several years.

The house known as the Bella Union, situated on the north side of Santa Clara street, where the Auzerais House now stands, was built this year, and opened as a drinking saloon about Christmas. The frame was brought from the eastern States. It was two stories high and had a sheet-iron roof. It may be seen in the engraving of the view of Santa Clara street, as it appeared in 1851.

On the east side of Market, between Santa Clara and El Dorado streets, stood the Star Fonda, a restaurant kept by a Chilanian, which was well kept and well patronized. The hotels have already been alluded to.

There were a few other buildings erected this year, of small dimensions, and of frame; and but a few. Tents were numerous. The high wages of carpenters, of materials, and of labor generally, retarded the growth of the town, architecturally.

A neat little frame church of the Presbyterian denomination was erected on Second street, where the brick one now stands. It was painted white, had green blinds, and could contain about five hundred people. It was refreshing to the eye of civilization. Its first pastor was the Rev. —— Brayton. He was quite popular, mild and gentle in his manner; and made agreeable impressions on his first acquaintance with strangers. This church still stands in the rear of its first location.

The Baptists had a church on Santa Clara street, between Second and Third, where the Opera House now stands. It was burned down in 1854. The Catholic church was one of long standing, and has already been described in a former chapter.

The Rev. E. Bannister taught a school, called the San José Academy, where the English and classics were learned.

The cholera appeared in the fall, taking away but a few of the white population. It was confined principally to the natives, who were imprudent in their habits and mode of living.

The Legislature assembled on the sixth of January. The town was rapidly filling up with strangers, much to the gratification of hotel-keepers and boarding-house proprietors. On the 8th, the Governor tendered his resignation to the Legislature, which was accepted on the 11th; and John McDougal sworn in as his successor. As the question

of the removal of the Capital from San José was one of the leading ones, and one which affected the city more than any other, the citizens were quite active in catering to the wishes of the members of the Legislative body. As their pay was in State scrip, which was by no means at par in market, it was of no small moment to the holders of that currency, to know how they could make it available in the payment of their daily expenses. Their expenses were high, and were to be met weekly; and those who were not exceedingly flush, looked to the compensation derived from their services to the State, as the resource of their current expenditures. Finally, the citizens had induced the hotel-keepers, and boarding-house proprietors, to receive State scrip from the members for board, at par. That did much to allay and modify the dislike to San José. That alone was insufficient, on the part of San José, when other places were making extravagant bids for the Capital. James F. Reed offered four blocks of land, and one hundred and sixty lots, which were to be sold to raise funds for building the Capitol. This bid was made by the citizens through Mr. Reed. Charles White offered one and a half square miles of land, about three miles distant from the center of the city, upon conditions that the State should lay it off in lots for sale; reserving therefrom a sufficient area for public buildings, and that one third of the amount realized from the

sales thereof, should be paid to him, and the remaining two thirds to the State, to be used in building.

Another offer had been made by John Townsend and others, of two hundred acres in the vicinity of the town; provided, the State would build thereon the State buildings, except the Penitentiary. The prominent citizens were not inactive in the exercise of their influence with the members of the Legislature, on the Capital question. They counted noses daily, to see what changes had taken place. They were aware that deeds for town lots in Vallejo, were numerous. They had their suspicion into whose hands some of these deeds might fall. In fact, up to the hour of midnight, previous to the taking of the vote, according to promises, San José had the requisite number to prevent a removal. Before the vote was actually taken, Vallejo had gone San José better, in the language of the card dealers; hence the removal. It was a bargain and sale. The Vallejo party understood the dish which they were preparing, and they watched every cook that had a finger in it. They salted one of the cooks, and the dish was seasoned *apropos*. The Act of Removal was passed February 14th.

After the question was wholly concluded, the citizens here did not feel under much obligation to be over generous towards the parties that had deprived them of what was justly theirs—theirs

because San José was the best location, considering the welfare of the whole State.

As the promise to take State scrip for board had no definite period as to its duration, the proprietors of the hotels and boarding-houses were of the opinion that there was no profit in receiving scrip at par; and they politely informed the members of the Legislature that they were exceedingly sorry that State scrip did not pass at par value; but, as they were in no way responsible for its depreciation, they could not accept it in lieu of gold. Accordingly, board bills were paid thereafter in gold, or scrip at gold prices.

The adjournment of the Legislature, and the fact that the Capital was removed, had a disastrous effect on the growth of the city. Everything seemed to be at a standstill. The titles were not considered as perfectly settled. The Alcalde titles for building lots had been granted by American Alcaldes; some while the country was occupied by a military force, prior to the treaty with Mexico, and some subsequent to the treaty. Many lawyers, and some Judges, were of opinion that grants of Pueblo lands made subsequent to the period at which the American flag was hoisted here, were invalid. This year appeared to be the dullest during the American occupancy of San José. Although dull in honest transactions, crime seemed to abound in proportion to the decadence of financial prosperity. The "Sacramento Tran-

script" observed, in its issue of January 6th, that "Crime continues to be rife in San José and vicinity. Scarcely a day passes without bringing something new to light." Three convicts escaped from the jail on the thirtieth of January. Francisco Gutierrez was executed for murder July 18th. On Sunday morning, September 7th, there was some excitement created by the appearance of a dead body swinging on the gallows. The deceased had been hung during the previous night.

The Academy of Notre Dame was established. The building erected therefor was built of wood, two stories high, and stood in front of the present College of Notre Dame, close to the street. From its commencement it was well patronized. More will be said of it hereafter.

During this year, the San José Academy, under the Rev. E. Bannister, as principal, was incorporated, having a board of nine trustees. Its first term closed November 28th.

On the eleventh of September, a meeting, called the Division Meeting, was held in the Court-house, to elect delegates to the convention to be held at Monterey, on the fifteenth, to take into consideration the division of the State. The following persons were elected: Robert McCall, Geo. W. Crane, R. P. B. Caldwell, Chas. E. Allen, Geo. B. Tingley, Joseph Aram, John W. Williams, Wm. R. Bassham, Julius Martin, Thomas Bodly, John H. Merril, and John H. Watson.

The county procured the use of the Bella Union, on Santa Clara street, as a Court-house. The denomination of Northern Methodists erected a frame church on the south side of Santa Clara street, between First and Second. It could accommodate about six hundred persons.

There was but little improvement this year in the way of building.

CHAPTER XX.

1852–1860.

Crimes.—Punishment,— Execution for Grand Larceny.— Murder of Smith.—Express Company.—Suit of City against County.—San José Academy.—"Santa Clara Register."—Fire.—Election.—Dedication of Methodist Church.—Civil and Military School.—Principal Hotels.—Treasury Robbed.— Bascom Institute.— Common Schools.—Explosion on *Jenny Lind*.—Mrs. Hensley's Premises.—Santa Clara Street Improvements.—City Vote.—Telegraph Line.—Improvements.—College of Notre Dame.—Advance of Real Estate. — St. James Square Granted for Depot. — "Semi-Weekly Tribune."—Artesian Wells.—Money for Indigent Sick,—San José the Capital.—Removal of Supreme Court to San José.—Agricultural Society Organized.—Stage Fare to San Francisco.—Church Burned.—Bell Purchased for Hook and Ladder Company.—Engine Company Organized.—Berreyessa Executed.—Fire Engine Purchased.—Engine House.—Vote.—City Hall.—Indebtedness of City. —City Loan.—County Jail.—School by Gates.—Improvements.— "San José Telegraph."—Omnibusses to Santa Clara.—Bells tolled for King of William.—Public Meetings on Vigilance Committees, —Earthquakes. —Reincorporation of City. —Fire.—Execution of Cardoza.—Organization of Fire Department, and of Torrent Engine Company, No. 2.—Common Schools.—Number of Children.—Cemetery Enclosed.—Railroad Meeting.—Rules of Cemetery by Ordinance. — Improvements. — Crosby Shot.— Fire.— Election.— Squatter Meeting.—Dedication of Baptist Church.—City Expenditures.—Notice of Land Company and Commissioners of Funded Debt.—Horace Greeley.—Theater.—Incorporation of Agricultural Society.—"Daily Reporter."—Mass Meeting.—"Weekly Reporter."—School Fund.—Court House.

1852. The history of the first few years of this decade is blotted with crime throughout the State: and San José has not been fortunate enough to be excepted from the catalogue of criminal localities. Murder, highway robbery, and stealing, were

the avocations followed by no small number. The law permitted punishment by death, in the discretion of the jury, upon conviction of grand larceny. Such a law appeared necessary at this early day, so numerous were the thefts of live stock.

Theodore Basquez was executed January 30th. He had been convicted of stealing a horse. The punishment, at the present day, seems beyond what justice would demand. In this instance, the punishment was not too severe ; the victim was an abandoned wretch, and had been indicted several times for crimes for which he had not been tried.

Vigilance committees were in vogue, and this fact, doubtless, had a tendency to lessen crime. In February, the jail was empty.

March 4th. Pedro Montenager murdered Charles H. Smith.

In this month an Express Company, by Reed & Kendall, commenced to run a line to San Francisco, by way of the boat.

May — . The city of San José sued the County for the sum of $34,000, and interest at 4½ per cent per month thereon, since 1850. The cause of the indebtedness was the purchase of the State House, for the use of the county as a court-house and county offices. A county not being a corporation at common law, and, there being no statute making this county a corporation; a demurrer was filed to

the complaint, which the Court sustained, and dismissed the case. The indebtedness was subsequently settled by the county.

The San José Academy, this year, was under the superintendence of J. M. Kimberlin as Principal.

This month Priciliano Peres was murdered. Crime was rife in August and September. August 23d, an Indian was murdered in the city. September 26th, four men were stabbed, some of whom died. On the 27th, James Blair was found dead, having been murdered. Also, an Indian on the same day. On the 28th, an American, whose name was unknown, was murdered near the Townsend estate, about two miles northeast of the city.

August 19. The "San José Weekly Visitor," changed its name to that of the "Santa Clara Register." Its last number bears date October 20th, 1853. The paper under the latter name was published in the Bella Union building, (up stairs), on Santa Clara street; by J. C. Emerson, proprietor. The terms were six dollars per annum in advance.

August 26. A large fire destroyed the residence of Samuel C. Young, on First street, the old Treasury building, and three others adjoining. Mr. Young burnt his hands severely in saving his child. His loss was over ten thousand dollars. Other parties lost several thousand dollars. It was supposed that the rats caused the fire by igniting matches. On the same night, early in the evening, another house burned belonging to Chabolla.

At the fall election, there were cast in the township, five hundred and ninety-two votes.

October. On the seventeenth, the Methodist brick church, on the corner of Second and San Fernando streets, was dedicated.

On the twenty-third, a meeting was called to form a County Agricultural Society.

November. A Civil and Military School was established, under Col. Charles A. Seefeld, Proff. Frederic Mooshake, and Hipolito Adler; the latter as Administrator.

On the 18th, the "Santa Clara Register" says that "there has been less crime; that no murder nor robbery has taken place for a fortnight past." It attributes the moral progress to the offices of the Vigilance Committees. Yet there was one execution this month, but the crime, of course, was committed long prior thereto. Ramon Romero was executed for the crime of grand larceny, on the twenty-sixth. On the seventeenth of December, an Indian was hung.

On this day, the City Council passed an ordinance requiring property holders to lay a plank sidewalk ten feet wide in front of their respective premises. The principal hotels were the Mansion House, J. R. Price's hotel, corner of First and San Fernando streets, and the French Hotel, kept by A. Chattelle, on Market street.

This was an exceedingly wet season; which caused the roads to be traveled with much diffi-

culty, in every direction. The Alameda road was impassable.

Business had been dull this year for the first eight or ten months; but, near the close of the year, immigration to this county increased; and houses, to the amount of nearly one third which had been empty, now rapidly filled up. The old year went out, and the new one came in with new life and increased activity, in all departments of trade.

1853. A little more than the first week of this year had passed, when the city was under an immense excitement, on account of the robbery of the County Treasury. On Sunday night, January 9th, William Akenhead, Treasurer, declared that he had been knocked down and robbed of the keys of the safe; that the darkness of the night and the suddenness of the blow, deprived him of the possibility of recognizing the robber. Twelve thousand dollars were missing. He stated that the money was in two bags—one linen, the other cotton; one marked "State," and the other marked "County." On the eleventh, he offered a reward of one thousand dollars for the apprehension and conviction of the robbers.

He further stated that, about eight o'clock in the evening, he heard a noise in the rear of the building; then shortly thereafter heard some one step upon the porch in front, and call his name; that he opened the door, and as he stepped out he received a blow from a club, which felled him to the ground; that

the robbers choked him, rifled his pockets, obtained the safe key, and that two of them went into the office and took the money, most of which belonged to the State.

There were two opinions about the robbery. Some were of opinion that none had taken place, and that the losses of Akenhead in gambling was the cause of what they considered a concocted plan to settle accounts. No further clue was ever obtained, and no evidence to place suspicion on any other living man. The next year, about fifteenth of February, Akenhead suddenly left. His office was on the north side of San Fernando street, near the corner of Second.

In January, the "Santa Clara Register" commenced its publication on Market street; Emerson & Swope, proprietors.

February. In this month was opened the Bascom Institute, under the auspices of the Pacific Conference. Mrs. R. C. Hammond was principal. There were nine trustees, as managers. This school was for the education of young ladies ; it was well patronized, and was well conducted. It continued until October, 1859, bearing a high character, and meeting with great success. It was the only Protestant one in the valley for a long time.

March. This month a Common School was organized, under the teaching of the Rev. Horace

Richardson. In June, the committee employed Orrin Hinds to keep one in the Baptist church.

April 11th. A deep gloom pervaded this whole community. On this day, the steamboat *Jenny Lind* left the wharf at Alviso, as usual, for San Francisco, with about one hundred and fifty souls on board. When opposite the Pulgas Ranch, the boiler exploded, scattering death and destruction. Some of the most prominent men of this city were aboard—such as J. D. Hoppe and Chas. White; both of whom, among many others, died from the burning and scalding which they there received.

On the fourteenth, a public meeting was called, and resolutions were passed expressing deep sympathy for the terrible affliction that had fallen upon so many of the citizens of this community.

The elegant grounds now owned by Mrs. Samuel J. Hensley were laid off this year. Major Hensley purchased the premises this year from Mr. O. L. Crosby. Mr. James R. Low, Sr., an Englishman by birth, who came many years ago to Massachusetts, thence here in 1852, and who has obtained a fine reputation as a landscape-gardener, was the master-hand that superintended the planning and adorning of this exquisite horticultural plot. The whole premises contain about twenty-five acres, one of which embraces the garden. In the spring and summer, it is the ground of enchantment. Here multifarious flowers greet the eye with every hue, and perfume the ambient air with

odorous breath; here grassy lawns are shaded by gracefully hanging boughs; here gurgling waters sparkle like a jeweled queen; here the apple-blossom from the cold clime greets the magnolia from the sunny south; here the fuschia, the jessamine, the orange-blossom, the heliotrope, and the roses array themselves in vernal splendor, as if invited by Flora at a May-day festival of the goddesses! Here the shell-bark stands by the English walnut and the almond, on friendly terms—all thriving luxuriously, as if indigenous to the same clime. As the passer-by halts to gaze at the enchanting scene, he fancies it is the abode of fairies, and he meditates for a moment, wondering if elsewhere on earth such a variety of the floral kingdom live in harmony together.

March 25th. The total indebtedness of the city was eighteen thousand four hundred and two dollars and nine cents. Subsequently, ten thousand dollars was received from the county in payment for the State House. This month the City Council passed an ordinance, making the license for gambling, five hundred dollars per month for each table.

There was a great deal of talk about building a good stage road across the mountains, to the Mariposa mines, a distance of eighty-six miles. It was estimated that fifteen thousand dollars would defray the expense. The people of Stockton were not at all well pleased with the idea, lest

the trade to that city would be lessened thereby. The matter ended in talk, as it is well known that no such road was ever built.

March 29th. The State House, used as the court-house, burnt down. After this, the adobe building of F. Lightstone, on Lightstone Alley, was occupied as the court-house, only for a few months, when the county purchased the house called the "What Cheer House," on the corner of San Fernando and Second streets, for a court-house.

May. The city appropriated five hundred dollars to improve Santa Clara street, between First street and the acequia (ditch), which crossed the street near the college of Notre Dame.

August. The San José Academy came under the charge of Samuel Lea, as Principal, and Orrin Hinds, as assistant.

At the fall election, eight hundred and fifty-three votes were cast in the whole township. The same basis of the number of votes in a given location, which is usually adopted, will not suffice here, upon which to estimate the amount of population. In this State, at this early period, the larger proportion of the inhabitants were legal voters; that is, of American citizens.

October. Telegraph poles and wires had been erected, connecting this city with San Francisco. It was a novelty, and quite an event in the history of the place. The natives could not compre-

hend it. One old Mexican waited nearly all one day to see the mail pass on the wires. An old Mexican lady looked at the poles with wonder. They had cross bars on them, to which the wires were attached. So many crosses erected in a Protestant country, struck the old lady with perfect amazement. "Well!" said she, "I believe these Americans are becoming good Catholics;" and yet, they were not more ignorant than a certain American, who asked a friend to superscribe a letter, and remarked that he would like to have it done as soon as possible. The friend, knowing that the mail stage had already gone that day, inquired why he was in such a hurry. The man replied that he intended to send it by telegraph. This is not a joke, nor a random statement; but a fact.

October 8th. A great public meeting of settlers, to consider the necessary steps to be taken to resist the confirmation of the Pueblo claim of land. Resolutions were passed, and committees were appointed to report.

October 20th. The "Santa Clara Register," was changed to that of "San José Telegraph and Santa Clara Register."

November. Within the last year, it was estimated that nearly one hundred houses had been erected in the city. There were no empty ones. Many were built of brick,—a material that had not been used, scarcely, in house-building prior to

this year. Eleven hundred and fifty thousand bricks were used this year in building houses in this city; nine thousand of which were made here, and the remainder at Santa Clara. Dr. Devigne built the house now on the southeast corner of Santa Clara street and Pacheco alley. The building on the southeast corner of Market and Santa Clara streets, was erected this year. Merritt and Brothers built a two-story brick house on Fifth near St. John street, which is now standing. Messrs. Auzerais built their store on Market street. A two-story frame house was brought from San Francisco, and put up on the northwest corner of First and Santa Clara streets.

The Sisters of Notre Dame commenced their brick college this year. They were forced by the increase of the number of pupils, to enlarge their premises. They have now one of the finest colleges for young ladies in this State. The college is supplied with a large and well selected library, a fine cabinet containing a large variety of specimens in conchology; and complete philosophical and chemical apparatuses, for the instruction of the higher classes. Everything is taught here that is requisite for the graduated pupil to be termed an accomplished scholar. The buildings are substantial, and well fitted for their intended purposes. They present no gilded ceilings--no fretted domes--nor the brilliancy and beauty of many noble structures that decorate more opulent cities; but they

present an air of durability and comfort. The style of the architecture is Grecian. It has a front of one hundred and fifty-seven feet on Santa Clara street, with three entrances. The main centre building extends back about seventy-five feet, and has a pediment unadorned. It has two wings, each two hundred and five feet long, leaving in the centre a court for play-grounds. The centre building is adorned with a cupola, from which a splendid panoramic view of the city and surrounding country may be had. The west wing is crowned with a neat spire. The main entrance is the centre one, on either side of which is a fluted Ionic column, about seven feet high, and one in diameter. This entrance leads into an ante-chamber, about sixteen feet square, which communicates with a parlor on each side. Passing through the chamber northward you enter a hall about twelve feet wide, running east and west through the building. Each story above has a corresponding hall. The first floor has, besides many study rooms, a spacious one used for recreation, which is ninety by thirty-four feet, having folding doors across it, cutting off thereby one third of the space if desired. The Chapel on the same floor, is a neat and plain room, in the west wing, about sixty-five by thirty feet in area, and twenty-five high. On each side there are four high Roman windows. Behind the altar, which faces the entrance, is an alcove; on one side of which is a niche containing a sculptured image,

representing the Virgin Mary; on the other side an image of Saint Joseph. Over the entrance is a small gallery with an organ, and a space sufficient for about a dozen singers. The second and third stories are used as dormitories. Five of the sleeping apartments are about fifty by thirty feet. All of them are well ventilated and neatly kept; having toilet rooms conveniently near on the opposite side of the hall. One of the apartments in the third story of the east wing, is ninety by thirty-one feet. This room is used as a depository of baggage, containing all of the trunks belonging to the pupils, with their respective names marked thereon. There are several rooms reserved for persons who may become sick. The east wing was built in 1862. The frame building first built in 1851, was removed in 1863. The grounds contain fourteen acres, enclosed with a brick wall about eight feet high, are beautifully laid off and adorned with flower beds, lawns, orchards of rich and beautiful fruits, and vines of choice grapes, all kept in a neat and tasteful condition. Whatever is attempted to be done on the premises, is well done. Many improvements have been made within the last few years, until the premises have cost over one hunhundred and fifty thousand dollars.

In the last of November, real estate advanced rapidly. It was owing mainly to a belief that a railroad would soon be built to San Francisco. By the first of December, it was reported that all of

the stock had been taken in the railroad company. Elliot Reed sold his cottage (now Wm. H. Hall's), just north of the Court-house, for five thousand dollars, double what it was worth the previous year. Dr. Devigne sold to Bonacino and Protolonzo the house built by him on Santa Clara street, for eight thousand dollars. Frank Lightstone sold the lot on the southwest corner of First and Santa Clara streets, in September, for three thousand one hundred dollars. Three months thereafter it was worth considerably more.

The city appropriated this winter one thousand five hundred dollars, for the improvement of Santa Clara street, from First street to the acequia, and one thousand dollars to improve the same street from the acequia to the bridge, and the repairs of the bridge on the Guadalupe. The city, also, about the first of December, granted St. James' square for a railroad depot. This ordinance still stands as when first passed.

1854. The Hook and Ladder Company was established January 3d. The San José "Semi-weekly Tribune" was issued about the fifth of January. As this year came rolling in, the artesian water first came surging up from its hidden depths, to play and sparkle in the living light of day. What a change! What a wealth for this beautiful valley! Far beyond in value the discovery of a dozen gold mines; it appeared to be the work of enchantment. This was the only thing that seemed

to be wanting. All had felt that the scarcity of water for irrigation, and good water for drinking, were the great necessaries of this lovely valley. Here was a genial clime, a rich soil embosomed in the hills, like a jewel in a deep setting. It was brilliant in its vernal freshness; parched in the summer's heat. Nature herself seemed dissatisfied with her work. To complete it, she diademed the jewel with the sparkling element, and caused the fame of this land to spread like the light of the sun, all over the earth. And now, how lovely, how enchanting has this valley become, by the just combination of the elements! Now, we behold the artificial currents interlacing, like silver threads, the innumerable blooming gardens and fruitful orchards; nourishing myriads of multiform roots—dyeing the leaves with living green—the flowers with varied colors of deepest hue: quenching the thirst of living man, and causing him to pause as he beholds the face of nature, to reflect upon the goodness, the wisdom, the power, and wondrous works of the Creator of all things.

The first well bored was that of Messrs. Merritt & Brothers, on Fifth street, on the premises where they built their brick house. It was in the first part of January that the boring was done. Water was reached at about fifty-five feet, but the boring proceeded to the depth of eighty feet, when a stream of water rushed up with great force, almost sufficient to run a saw-mill. The bore was six

inches in diameter. In the last week of the month, another well was bored on the premises of J. L. Shepard, about three miles east of San José. After passing through muck and clay a distance of seventy-five feet, the auger reached a substratum of sand, into which it sank some five feet, when the water gushed out with a tremendous power. The pipe was adjusted so that it reached sixteen feet above the surface of the ground, from which the water surged with a force and velocity surpassing the one bored by Merritt & Brothers.

In the last of February, T. Meyers bored the next well. In August, G. A. Dabney bored one near San Fernando street, that exceeded all others in its volume of water. After boring six feet, the auger entered a bed of clay, through which, a distance of fifty-four feet from the surface, it penetrated, when the water rushed up with a force unknown here in well-boring. It flooded the surrounding lands, so that it became a serious question how the water should be disposed of. The City Council considered it a nuisance, and passed an ordinance declaring that Dabney should stop the flow of water to such an extent; and, if not, he should pay a fine of fifty dollars for every day he allowed it thus to run. The ordinance had no effect on the dynamical properties of the water, nor any on Dabney; it flowed on, rising nine feet above the surface of the ground for about six weeks, when other wells which were bored in that

vicinity lessened its force and volume. It was a curiosity, and it received visitors daily. A stream flowed therefrom four feet wide and six inches deep.

Not a work yet has been written about California, that does not contain errors concerning this county. I find the following in "The Resources of California," by Hittell, page 67: "Only a small portion of Santa Clara Valley yields artesian water. The artesian lies north of a line commencing at Mountain View, thence running nine miles with the road through the town of Santa Clara to San José, and thence southeast to the mountains. South of this line, no artesian water is found." This would be a singular statement to make to a resident here. As a fact, artesian wells can be bored in any part of this valley, successfully. There is no portion of the valley that water cannot be reached within the depth of from fifty to four hundred feet. Usually, it is not necessary to go over a depth of two hundred and fifty feet, at the farthest. I make this correction for the benefit of the valley, and the information of strangers, who may, perchance, read the work of Hittell; and become thereby, a little suspicious of the character of a part of the valley.

March. Ever since the year 1850, this city had been compelled to expend a great deal of money for the indigent sick. Persons out of health, and out of money, were continually leav-

ing the mining regions to find their way into this valley, for the restoration of their health. Being here, humanity demanded that they should be cared for; although, prior to their sickness, they had not lived a day here, and had no claim upon this community, save what they might solicit in the name of humanity; yet, the city was necessarily, upon that ground, in duty bound, to aid them. She did so, and believing that such expenses ought to be defrayed by the State, the Mayor and Common Council presented a petition to the Legislature, asking that an appropriation of seventeen thousand four hundred and forty dollars be made, to reimburse the city for that amount, which was the sum expended by her, for the unfortunate beings who sought a temporary residence here for health's sake. This petition did not meet with success. The fact, however, of that class of persons congregating here so numerously, is evidence of the high character which this valley had early obtained, in a sanitary point of view.

March 25th. The Legislature having passed an Act, declaring that the Supreme Court should sit at the Capital of the State, it became necessary for the court to construe legally that Act, in order to follow its provisions. Upon a review of the law, it was held by two of the Justices, Heydenfelt and Wells (a majority), that San José was the Capital. Thereupon, in chambers, March 27th, the following order was made:

"It is ordered that the Sheriff of Santa Clara County procure in the town of San José, and properly arrange and furnish a court-room, clerk's office, and consultation room, for the use of the Court. It is further ordered that the clerk of this Court, forthwith remove the records of the Court to the town of San José. It is further ordered that the Court will meet to deliver opinions at San José, on the first Monday in April, and on that day will appoint some future day of the term for the argument of cases.

"HEYDENFELT, J.

"WELLS, J.

"Attest: D. K. WOODSIDE, Clerk."

This order was somewhat encouraging to the residents of this city, as they saw the judiciary agreeing with them in opinion upon a question that had cost them some money and time, a few years previous, in endeavoring to keep the Capital from rolling away. It had been so transitory in its nature, that it was not inaptly said to be on wheels. Under the foregoing order, the brick building now on the southeast corner of Santa Clara street and Pacheco alley, was procured by the sheriff, as the Supreme Court-House. A writ of mandamus was issued out of the District Court here, against all of the State officers, commanding them to show cause why they should not remove to San José, and here hold their respective offices. This suit was brought

to determine, judicially, the location of the Capital. Messrs. P. H. French and Frederic Hall argued the cause in favor of the writ, and Messrs. Phil. Edwards and Wm. H. Steward, for the State officers. Steward was acting Attorney-General, in the absence of McConnell. The Court decided in favor of the writ, holding that San José was the Capital. On appeal, December 26th, the decision was reversed by the Supreme Court. In the meantime, Justice Wells had died, and his place had been filled by Justice Bryant. Heydenfelt dissented, still holding that San José was the Capital.

May 6th. An Agricultural Society for the county was organized. A constitution and by-laws were framed, and reported at an adjourned meeting, on Saturday, the 20th.

June. An alarm bell for the Hook and Ladder Company was furnished by the company and citizens, at a cost of four hundred dollars.

July. The Baptist Church burned on the 1st. The stage fare to San Francisco was reduced from eight to six dollars. The San José "Semi-Weekly Tribune" issued its first number on the fourth of this month.

On the twenty-first, Empire Engine Company No. 1 was organized.

22nd. Demasio Berreyessa was found hung to a tree in the southeast part of the town. Alexander McClure had been murdered about the twenty-

fifth of last month. It was said that Berreyessa was the murderer. He was hung by a Vigilance Committee, in the night.

July 27th. The City Council, together with several citizens, purchased in San Francisco a fire engine, for the sum of one thousand eight hundred dollars. The Fire Department built an engine house on Lightstone alley, sixty feet deep, thirty-four feet front, and two stories high.

September. At the county election, nine hundred and forty votes were given within the township of San José.

October 16th. At the election, the question whether the city should build a City Hall was voted upon. Two hundred and sixty-five votes were cast in favor of building, and fifty-seven against it.

At the close of this month, the city indebtedness was five thousand six hundred and ninety-one dollars and seventy cents. The amount on hand, and that which was due from licenses and taxes, about to be collected, was five thousand and sixty-four dollars; leaving the city behind six hundred and twenty-seven dollars and seventy cents. The clerk's salary then was ninety dollars per month; the marshall's, fifty dollars; and the street commissioner's, (a useless officer), one hundred and twenty-five dollars per month; total monthly expense, five hundred and sixty-five dollars.

The City Council passed an ordinance, authorizing a loan of twenty thousand dollars, at a rate of interest not to exceed three per cent. per month, to provide for the building of the City Hall. The contract for the brick was awarded to Messrs. Hobbs, at thirteen dollars per thousand.

The County Jail was completed this fall, at a cost of fifteen thousand dollars.

Mr. Avery built a foundry this year, which was a great convenience to the citizens.

A district school was established by Freeman Gates, on the corner of Santa Clara and Third streets; making two public schools only in the city at this period.

Many houses had been erected during the year, and the city wore an aspect of thrift. The artesian wells were among the main causes of a renewed agricultural and horticultural progress. And the water therefrom was of equal importance as a beverage; inasmuch as the surface well-water, possessed a brackish flavor which was by no means palatable.

1855. On Monday April 16th, the City Council held its first session in the new City Hall. This building, situated on Market street, was planned and built under the supervision of Levi Goodrich, as architect. The materials of its walls are brick and adobe; it having been built upon the walls of an adobe house. Its style of architecture was castellated Gothic. Its dimensions are sixty-eight by

forty-two feet, and two stories high. Its upper story contained one spacious apartment, and two small rooms. The lower floor is used by the Mayor and Common Council, and other city officers. It has been reconstructed during this year of 1870; and its castellated appearance in a measure has been diminished. The interior has been materially changed for the better. It cost about forty thousand dollars. When in process of erection, it was thought that there was a possibility of its being used as a Legislative hall, inasmuch as the Supreme Court was holding its sessions here, as the seat of government.

At the city election, there were cast four hundred and forty-seven votes.

July 4th. A celebration took place; the Rev. Eli Corwin delivering the oration, and R. A. Redman reading the Declaration of Independence. Since 1850, the Fourth of July has not received much attention here.

There was considerable building this year, several houses being constructed of brick; among them, some of the brick buildings on the east side of Market, between Santa Clara and El Dorado streets. Peter Davidson put up one-story fire-proof brick stores, on the northwest corner of Santa Clara and Market streets.

The artesian well on Market street was bored. The depth of two hundred and fifty feet was

reached in this well in August, when a large volume of water poured forth therefrom.

The crops in the valley were light this year, and business was not very brisk—although building went on at a fair rate.

The last number of the "San José Telegraph and Santa Clara Register," was issued on the 7th of August. The first number of the "San José Telegraph" came out August 14th.

1856. A new omnibus line was run to Santa Clara, by Crandall and Brother, in March.

April. At the city election four hundred and seventeen votes were given. The city election has seldom been a test of the full vote. The fall elections, usually, receive the whole number of votes.

May 22d. At 12 o'clock M., the bells tolled for the death of James King of William. There was much excitement here, upon the action of the San Francisco Vigilance Committee, and a large meeting was held at the City Hall, on the 17th of June, for the purpose of giving expression to the public feeling, on that important question. Ex-Governor Burnett addressed the meeting, condemning the actions of the Vigilance Committee. The majority seemed to favor the Committee, and passed the following resolution, among others: "Resolved, That we, the citizens of Santa Clara County, do cordially approve of the action of that Committee up to the present time; and that we

have the fullest confidence in their wisdom, integrity and prudence in what they may find it necessary to do hereafter, and that we cheerfully offer them our sympathy and support in the good work they have undertaken." Gov. Burnett offered other resolutions as a substitute, which were laid on the table.

June 23d. A Law and Order meeting was held, at which Burnett, Wallace and others, addressed the meeting. Resolutions against the actions of the committee were passed.

The State Agricultural Fair was held here this year. The exhibition of vegetables and fruit was exceedingly fine. The town was crowded to overflowing. Some complaints were made on account of the insufficiency of the accommodations, but considering the size of the town, and the assembled multitude, they were well cared for. Private houses were open to a greater extent than is usually the case in Sacramento, on similar occasions.

At the fall election. there were seven hundred and eighty votes given in the township.

October 15th. A severe shock of earthquake occurred at half past five o'clock, A. M. The vibration was from the northwest to southeast, and its duration fifteen seconds.

There was some progress this year in the growth of the city, although not an extensive one. Eli Jones & Co. erected a brick store on the east side

of First street, between Santa Clara and El Dorado streets.

1857. Two earthquake shocks took place on Friday, January 9th; one at four, and the other at eight o'clock, A. M.

January 31st. On Saturday, a large meeting assembled at the City Hall, to consider the propriety of annulling or amending the city charter. Hon. C. P. Hester was Chairman, and P. O. Minor, Esq., Secretary. Wm. Matthews, Esq., on behalf of the committee, to whom had been referred the matter of drafting a new charter, reported certain amendments to the existing one, which appeared to meet the views of the majority of the meeting. The Legislature passed a bill to re-incorporate the city, which the Governor vetoed. Finally, another bill passed to re-incorporate on the twenty-seventh of March, which the Governor signed, and the same went into effect the second Monday in April.

February. On Tuesday, the third, a fire broke out in the Railroad House, a hotel situated on the northwest corner of Santa Clara and First streets. The two engine companies, and the hook and ladder company were promptly on hand, and worked with great energy, and thereby saved the building, although considerable damage was done to that and the adjoining houses. The buildings were all frame, and burnt like tinder. David McLellan,

the proprietor, estimated his loss at ten thousand dollars.

May 3d. Antonio Cardoza was hung in the County Jail yard. Torrent Engine Company, No. 2, was organized on the nineteenth. Also, on the same day, the Fire Department was organized. John B. Hewson was elected Chief of the Department, which office he held five years.

During this month, Wm. H. Hoy commenced to run a weekly express to Sonora; the fare was ten dollars.

June 5th. A large meeting assembled to consider the subject of suerte titles, at the City Hall.

The vote of the township, at the fall election, was nine hundred and eighteen.

October 20th. At a quarter-past six o'clock P. M. a heavy shock of an earthquake startled the citizens. The clocks facing the east, stopped running, but the people did not, until they were out of their houses.

In the township there were five school districts, having seven hundred and ten pupils. Freeman Gates was Superintendent of the common schools of the county.

Rents and property were low this year. Mechanics were occupied at moderate prices. Several buildings were in process of construction. Mr. Stock built a brick house on First street. The school-house on Washington Square was finished. Mr. Knoche built a brick store on the corner of

First and El Dorado streets. The town advanced in growth, though slowly.

1858. April. At the city election, only three hundred and sixty-two votes were given, and at the fall election, the vote of the county fell one third from what it was the previous year.

This year added more brick structures to our city. Pfister & Co. erected the one now on the southeast corner of First and Santa Clara streets. Pedro Saisset built one on the same side of First, further south, near the terminus of El Dorado street. P. O. Minor built a concrete structure on the opposite side of First street. The Catholic church was encased in brick, and received the two towers and additional room by the wings attached. The brick church of the Baptist denomination, was constructed on the northeast corner of Second and San Antonio streets. Martin Murphy built some brick stores on the east side of Market street. Many frame houses were added to the list of structures. There was a steady improvement. The prosperity of the city was retarded this year by an injunction being placed upon the working of the New Almaden mine. The trade from that location was large, and material to this city. A large mass meeting was held at the City Hall, on Thursday, December 2d, to consider the matter of this injunction. It was issued at the instigation of the law officer of the United States, upon the ground that the mine was on public

land. The meeting passed many resolutions, condemnatory of the said legal proceedings; and among them, was one requiring copies of those resolutions, to be forwarded to the President of the United States, the Secretary of the Interior, and Attorney-General. Hon. C. P. Hester was in the chair, and Wm. R. Davis, Secretary. So far as was ever known, the meeting had no more effect than any other meeting on judicial proceedings. The courts could perceive no legislation therein, which they were bound to recognize.

On Friday, November 25th, at half past twelve o'clock, A. M., a heavy shock from an earthquake startled the community. The Catholic Church was injured a little thereby.

The number of children, between the ages of four and eighteen years, was two hundred and seventy-five boys and three hundred and ninety-six girls; total, six hundred and seventy-nine. The children under the age of four years numbered two hundred and forty-five.

This year the City Council enclosed Oak-Hill Cemetery with a substantial board fence.

1859. On the third of February, a large railroad meeting was held, to consider the question of building a railroad to Alviso, and to connect the same with fast boats to San Francisco. Some estimated that the road could be built at the rate of ten thousand dollars per mile, and one hundred and twenty thousand dollars to put the road in

running order. Others gave the sum of two hundred thousand dollars as requisite to complete the road and running stock.

February 7th. The City Council passed the following ordinance, establishing the price of lots in Oakhill Cemetery, and rules and regulations concerning the same.

"Section 1.—The following shall constitute the list of prices of lots in said Cemetery grounds, viz.: On all blocks adjoining the main avenue, twenty cents per superficial foot. On all blocks adjoining the cross avenues, ten cents per superficial foot, and on all other blocks, five cents per superficial foot. Any one person buying the four lots constituting an entire block, shall be entitled to the five feet running north and south through the block, without charge for the same; and when a division of any lot may be desired, the Superintendent or Sexton, may, at his discretion, make such division in a quantity not less than one eighth of a block, and shall charge therefor in addition to the above rates, fifty per cent.

"Section 2.—Owners of each lot or block shall have the right to enclose the same with a wall, not exceeding one foot in width, nor two feet and six inches in height above the surface of the ground, or with an iron railing, post and chains, or a neat wooden fence; such railing and fences must not exceed three feet in height, and must be kept in good order and repair by the owners of the lot,

and must be built to conform with the natural surface of the ground." This ordinance took effect from and after its approval.

The artesion wells this year all increased their volume of water, owing to the heavy rains.

Honey bees were introduced into this valley by Messrs. Gates, Patterson, Buck and Briggs.

March 16th. A new City Charter was passed by the Legislature, and approved.

Auzerais and Brother built several brick buildings south of their store on Market street.

Martin Murphy built upon a space of ninety feet, on the east side of Market street, placing thereon brick stores.

Clemente Columbet built the block on the west side of Market street, known as the "San José Hotel." Many frame structures were put up throughout the city.

March 29th. A horrible tragedy occurred this day, when Samuel J. Crosby and L. Posey Ferguson were killed. The fatal affray transpired at the corner of Second and San Fernando streets, while the District Court was in session on the southeast corner of these streets. The death of Ferguson was an accident. He was in the court-house while the affray was going on. A shot from the pistol of one of the parties to the conflict, passed through a plank three and one fourth inches thick, and entered his body, from which he expired in half an hour thereafter. Mr. Ferguson was a miner

from Grass Valley, who came here to accompany an old friend home to Missouri.

April 11th. A fire destroyed several wooden buildings belonging to Antonio Pico, situated on the east side of Market, and south of San Fernando street.

At the city election of this month, four hundred and eighty votes were given.

At Evergreen School House, a very large meeting was held, to hear Mr. A. A. Green, of San Francisco, discuss Spanish land grants in general, and the Chabolla grant in particular. After his speech was concluded, a series of resolutions were passed; in one of which, the meeting expressed their sympathy with the settlers of San Francisco and other counties, and also declared that they would unite with them to take all necessary proceedings to protect their rights.

May 8th. The Baptist Church was dedicated.

The amount expended by the city for all purposes during the last year, was eleven thousand seven hundred and sixty-eight dollars, and eighty cents. This included the redemption of bonds, Treasurer's commission, and current expenses. There was due as interest on the Funded Debt, July 1st, one thousand eight hundred dollars.

August 15th. The San José Land Company gave notice that they would sell their right to the lands known as the Five-Hundred-Acre tracts, provided application was made therefor within four months.

The Commissioners of the Funded Debt, gave notice on the same day that they would give titles to the same lands. The Mayor gave public notice that he did not believe the Land Company had any interest in said lands.

24th. Horace Greeley addressed a large assembly of people in front of the Mansion House.

September 2d and 3d. Bayard Taylor lectured here. On the first evening his subject was the "Arabs;" and the second one, the "Arctic Regions."

The votes of the city at the fall election numbered nine hundred and eleven.

October 10th. The first play in James Stark's new theatre was Richelieu; he playing the Cardinal, and Mrs. Stark the role of Julia de Mortimer.

This theatre was the first one constructed here. It was situated on the east side of First, between St. John and Santa Clara streets. It had forty feet front and seventy deep. The stage was twenty-five feet deep. The building would hold about six hundred persons. It was quite an era in the city of San José, to possess a building erected expressly for theatrical plays.

First street, between Santa Clara and San Fernando streets, was macadamized at a cost of one thousand three hundred and fifty dollars.

The Santa Clara Valley Agricultural Society became incorporated, and purchased seventy-six acres of land on the Alameda for the sum of six thousand one hundred and forty-two dollars. They erected

buildings for stands and seats around the race-track, on this tract of land denominated the Fair Grounds.

1860. January 16th. "San José Daily Reporter" made its first appearance.

January 24th. A mass meeting was held at the City Hall, to consider the question of the injunction placed on the Almaden Mine. Resolutions were passed requesting the representatives of this county in the Legislature, to take some action upon it. A petition with over four hundred signatures was sent to the Legislature, asking that the injunction be removed in some manner.

April. City election showed five hundred and seventy-six votes.

April 23d. The first issue of the "Weekly Reporter" appeared; the second on Saturday, May 5th, and one on every Saturday thereafter.

The school fund this year for San José, was two thousand four hundred and ninety dollars and eighty-five cents.

The general improvements this year were gradual, but sufficient to indicate a fair prosperity. This year the county rented the upper-part of the City Hall, as a court-house; and retained the same for that purpose until sometime in the year 1863.

CHAPTER XXI.

1861–1865.

Gas.—Settler's Parade.—Refusal of the *Posse Comitatus* to obey the Sheriff.--Adjournment of the District Court in Consequence Thereof. —Fire.—Votes.—Alameda Turnpike.—Indebtedness of City.— Fourth of July.--A. Smith Executed.—"Weekly Patriot."—Improvements.—City Census of Children.—Gen. Naglee's Premises.— Earthquake.—Bridge.—" Courier."—City out of Debt.—Civil War.

1861. JANUARY. San José became more brilliant this year, during the nocturnal hours, than heretofore, by the aid of gas-light. The Common Council on the thirteenth day of July, 1860, granted to James Hagen, a franchise to light the city with gas. The first lights were thus given by him on the twenty-first day of January, 1861, to eighty-four consumers. The streets then received seven lights. The price of gas was ten dollars per thousand cubic feet. The consumption of gas for the first twelve months, was one hundred and sixty-five thousand cubic feet. The consumption of coal was ten tons per day on an average.

By reference to the amount of gas, as given in this work under the year 1870, some idea may be had of the prosperity and growth of the city, during a period of nine years.

In the spring of this year, the "San José Weekly Mercury" was issued by Mr. J. J. Owen,

as editor and proprietor, he having purchased the "Telegraph and Mercury," from S. N. Slocum.

April. The greatest excitement and demonstration which was ever exhibited in this county, upon the question of land titles, took place this year. The grant of Antonio Chabolla, for the tract of land known as the Yerba Buena, lying east or southeast of the town, had been confirmed to the claimants thereof, under the Chabolla title, by the United States Courts. There were many settlers on the land, some of whom had occupied the same for quite a lengthy period, under the belief that it was public land. They seemed to be of opinion that the grant was a fraudulent one, notwithstanding the confirmation thereof, and the fact that the land had been patented by the United States, in accordance with the decree of confirmation. The advice which had been given the settlers, was evidently not that kind which had a tendency to better them, or to cause them to view the matter in the proper light. They were induced to expend money in the way of lawyer's fees, that was as useless as throwing the money in the sea. The government had conveyed in fee simple the land to the claimants, and no party but the United States could move to set aside that patent, upon the ground of fraud, or any other ground. Suits in ejectment had been instituted against some of the settlers on said land, and judgments rendered against them for possession of certain tracts, in the

Third Judicial District of this State, in and for the County of Santa Clara. Wm. Mathews, Esq., of counsel for plaintiff, in those cases, caused writs of execution for possession to be issued to the Sheriff of the county, that the plaintiff might have possession in accordance with his judgments. The Sheriff summoned a posse of six hundred men, to meet him at the court-house, to go with, and to aid him in executing the writ. When the posse assembled at the court house, they were asked if they were armed, to which they replied in the negative; and being asked if they would arm themselves, they likewise replied in the negative. As the posse would render no assistance, they were dismissed by the Sheriff.

About one o'clock P. M., nearly a thousand settlers paraded through the town, some on horses, some in wagons, some on foot, and nearly all armed. They had one small cannon. All of the settlers' leagues of the county, and some from adjoining counties, were said to have been present. Toward the close of the day they went to their respective homes without doing any damage, save that of disobeying the writ.

At the opening of the May term of the District Court, his honor, Judge McKee, called the attention of the members of the bar to the fact, that armed resistance had been made to the writs of the court, that it was of but little use to render judgments that could not be executed for want of adequate power;

and that, in consideration of the fact, he would not sit in judgment for a people that would so violate their duty to the government. He, therefore, adjourned the court until the term in course, without transacting any business. That spirit of resistance died away long ago, and there is no disposition to act but in harmony with the law.

July 4th. The most enthusiastic celebration occurred on this day, which was ever witnessed in this town.

August 1st. A fire destroyed Appleton's Hotel, being the one formerly known as the City Hotel, nearly opposite the site on which the Mansion House stood.

At the fall election, one thousand one hundred and ninety-five votes were cast in the city.

October. On the twenty-third, a great explosion of the boiler took place at Bassham's steam flour-mill, on the Guadalupe river, doing great damage.

1862. March. The small-pox prevailed to some extent, and quite a number died. The deaths were principally among the poorer class, who did not pay much attention to their cleanliness; and who were intemperate in their diet and exposure.

April. There were seven hundred and sixty-two votes cast at the city election.

June 6th. The Alameda Turnpike Road Company was incorporated. This summer and fall, this company repaired the Alameda road, and placed a toll-gate thereon, near the Fair ground.

The road was completed November 1st, at a cost of twenty-eight thousand six hundred and eighty-five dollars and eighty-one cents.

July 28th. The San José Institute and Commercial College opened with one hundred and twenty-five scholars, under Professor Gates.

Jasper G. Gunn absconded, after having embezzled two thousand seven hundred and sixty-three dollars and forty-eight cents of the city funds.

Great improvements were made this year in all parts of the city; the bountiful rains gave life and activity to the whole country.

October. The number of boys in the city, between four and eighteen years, were one thousand eight hundred and eighty; girls, one thousand six hundred and seventy-six—total, three thousand five hundred and fifty-six. There were one thousand seven hundred and forty-six children under four years of age.

1863. January. The outstanding bonds against the city amounted to twenty-five thousand dollars. The City Treasury had four thousand dollars; and the Commissioners about three thousand dollars in their hands.

April. At the city election, eight hundred and nineteen votes were given.

May 25th. A fire destroyed some frame buildings on the west side of First street, opposite the Archer alley.

The county rented the upper part of the building on the northeast corner of Market and El Dorado streets as a court-house, and occupied the same as such until the completion of the new court-house in 1868.

May 27th. The San José "Tribune" made its appearance, after having been stopped six or eight months by order of Gen. Wright.

July 4th. This day was celebrated with a great deal of enthusiasm.

Edward Berri committed suicide by cutting his throat from ear to ear.

July 10th. Abner Smith was executed for the murder of Van Clean, of Santa Clara.

September. The votes numbered at the election, one thousand two hundred and sixteen. It will be observed that the city elections in the month of April, are not evidence of the real number of legal voters in the city. There is not as much interest manifested then as at the fall elections.

September 12th. On this day, the first number of the "Weekly Patriot" was issued by B. F. Murdock, editor and proprietor.

In this month was commenced the construction of the Auzerais House, situated on the north side of Santa Clara, between Market and First streets. This house was built, and is owned by Messrs. Edward and John Auzerais, of this city. At the commencement of this structure, it was in-

tended for stores; but during the process of its erection, the owners changed their mind, and concluded to make a first-class hotel of it. The work was performed under the supervision of the able architect, Theodore Lenzen, Esq. It has one hundred and thirty feet front, and sixty-five in depth, and is three stories high. The wing in the rear is one hundred and twenty-four feet long, and thirty-two wide. It is divided into apartments, as follows: First story—five stores, one hotel office, principal entrance, two billiard and bar-rooms, and one dining room. Second story—principal parlor, reception room, bridal chamber, eleven private parlors, and suites of rooms attached, thirty-eight bed-rooms, and several bath-rooms. Third story—Twelve private parlors, with suites of rooms, forty sleeping-rooms, and numerous bath-rooms; each story having halls and water closets. There are three large flights of stairs communicating with the three stories, in different locations, making the building easy of ingress and egress, in case of fire or other accidents. The building is heated by steam, partly, and partly by grates. The materials of which it is made, are brick and marble. It was completed in the spring of 1865, and first opened in April of that year. It cost over one hundred thousand dollars; and, with its furniture, an additional sum of fifty thousand. This house is *the* hotel of this city, and of the State, outside of San Francisco. Not only does

this apply to the conveniences and comforts of the rooms, but also to the table. It is kept by Messrs. J. M. Staples and Son.

The census of this year shows that there were two thousand and seventy-eight girls, and one thousand nine hundred and twenty-four boys, between the ages of four and eighteen years; making the whole number, four thousand and two.

The Presbyterian brick church was built this year, at a cost of twenty thousand dollars, under the charge of Levi Goodrich, as architect.

Messrs. King & Knoche erected a brick building near the Archer edifice, on the west side of First street. Patrick Welch built his large brick stable on First, between Santa Clara and St. John street.

The railroad depot, near San Pedro street, was erected this year. Within the last half of this year, more than fifty other buildings were put up. The city was prosperous, considering the dryness of the latter part of the year.

1864. January. The railroad from San Francisco, apparently, had been striving to greet the new year here; but, in this respect, it was not successful. It was completed to this city about the middle of this month. On Saturday, the 16th, the excursion party made its appearance in this city, with a long train of cars, crowded to their utmost extent. It was a day of great rejoicing for the people of this valley. And, as they saw their homes connected by the iron bands with the me-

tropolis of the State, they looked forward to witness a great and rapid progress in the future growth of San José. To-day bears evidence of the correctness of their foresight.

At this period, the principal hotel was the Continental, kept by George Bromley, on Market street.

The Masonic and Odd Fellows' Hall, was constructed on the northwest corner of Santa Clara and Market streets, this year. It was the same building, now known as the Hensley Block.

The vote of San José was one thousand two hundred and twenty-seven, at the fall election.

1865. C. T. Ryland, Esq., built his fine brick edifice, on the northeast corner of First and San Fernando streets.

July. Dr. Knox purchased the fifty-vara lot on the northwest corner of Santa Clara and First streets, for the sum of twenty-one thousand dollars. Soon thereafter, he erected the building now standing thereon, at a cost of thirty thousand dollars. The advancement has been such in property here, that the lot and buildings are now estimated to be worth one hundred thousand dollars.

This year, Gen. Naglee commenced to beautify his stately grounds, situated on the south side of Santa Clara street; and bounded on the east by Coyote creek, on the south by William street, on the west by Eleventh street, and containing one hundred and forty acres. The orchard

and vineyard were set out in 1858, but the greater part of the labor and improvements have been bestowed upon the grounds since the General returned from the war. The premises are tastefully divided into fields, parks and beds, where vegetation is seen springing forth in every form. A pleasant drive winds for a mile and a half through a vineyard of an infinite variety of grapes and gracefully-hanging trees. Here and there sparkling fountains feed this little vegetable world, and give it life and continued freshness. The capacity for irrigation is large. There are seven artesian wells, which can discharge one hundred thousand gallons each daily. Their full volume is not permitted to run, unless so much be needed. One of these wells feeds an artificial pond, and waters all the vegetables. It furnishes, probably, two hundred and fifty gallons per day.

The exquisite flower-beds are adorned with a myriad of blossoms of every light and shade ; and you almost fancy that at twilight hour the goddesses come stealing in, to deck themselves for the festal eve. Here is the palm, the fig, the olive, the almond; the magnolia, in all its splendor; the heliotrope, fuschia, geranium, oleander, jessamine, clematis, ivy, and the century plant. Here, too, flourish the palm from Panama; the origanum from Patagonia; the cedar from the Himalaya mountains and from Lebanon; charming varieties of cypress from Japan and China, and many from the Pacific

coast. Here grows, too, in all its grandeur, the beautiful eucalyptus; and here the arching willows shade the sparkling fountains. Here fair lady may gaze with delight at the beautiful Japanese arbors and hedges entwined with the fragrant honeysuckle, the jessamine, the clematis, and ivy. Mexico, too, has furnished her pepper trees, with their graceful narrow-leaved boughs, to aid in the adornment of these lovely grounds.

I observed an eucalyptus, planted in 1865, which mesaures fifteen inches in diameter. It is a wonderful growth, and shows how well this climate is adapted to its culture. Seventeen varieties of the acacia, and fifteen of the eucalyptus grace this forest, besides many varieties of the pine, the cypress, the arbor-vitæ, the juniper, the palm, and the fir; also, the yew, the laurel, the native nutmeg, the bay, the madroña, the mancenito, the tamarack, the Washingtonia, and the New Zealand flax, have their share in forming this arborical host. Nor has the Monterey cypress, so grand in form, been left out of the ranks. A magnolia, planted in 1866, is now fifteen feet high, and has been blooming all summer. A weeping-willow, planted in 1858, now measures twenty-nine inches in diameter. A century plant, or agave, planted in 1865, is now five feet high and seven in diameter. The avenue, one thousand feet long, planted two and a half years ago, is, on an average, thirty feet high, and the trees six or eight inches

in diameter. An eucalyptus, planted in 1865, is now fifteen inches in diameter. The rapidity of the growth of these trees is truly wonderful.

The deciduous trees, which are so very highly appreciated in the Eastern States, are continually falling by the ax of the horticulturist, to make room for rare varieties of evergreens. This lordly estate is dotted here and there with artistic works of statuary; standing, seemingly, to guard the enchanting scene from the touch of the spoiler.

How lovely it is to leave the city's hum, to wander in these green fields, amid the groves and pastures, near the hour of eventide; see playful children build their miniature gardens, hear the watch-dog's voice, the rippling fountains, and the merry birds warbling farewell to parting day. As one views all this, when the setting sun gilds the western sky with rose and purple tints, and floods all nature with soft and mellow light, it seems the work of enchantment.

The premises so far described are dedicated to the pleasures of man—not profit; and yet they are a wealth to him, in cultivating the finer feelings of his nature, in increasing his love for the beautiful works of our Creator, and making him what that Creator intended, a refined, intelligent man, above the sordid mind which seeks for naught but filthy lucre.

The pecuniary profits of this estate will be derived from the culture of the grape, and the manu-

facture of wines and brandies. Among the one hundred and fifty varieties of grapes here are the Peneau, the Riesling, from which Johannis wine is made, and La Folle Blanche, the only grape from which cognac brandy is produced; all which have been cultivated with great success, and the manufacture of wines and brandies therefrom has been equally successful. The development of the extraordinary flavor and delicacy of the wines and brandies, produced here, is truly wonderful.

The wine-house, with a capacity of one hundred thousand gallons, for completeness and condensation, with all the improvements of the present times, is unsurpassed in this or any other country.

The first-class brandies manufactured by Gen. Naglee are scarcely equaled, certainly not surpassed, by any other in the world. The reason is apparent. The quality of the grape produced here is equal to any on the globe. Those grapes are not pressed, so that the wine made therefrom contains none of the juice of the skins and seeds, nor of the stems, (those portions which produce fusel oil and tannin,) hence the freedom of the wine from these deleterious substances. In Europe, this mode is not adopted, from the fact that wine and brandy manufacturers cannot afford it. They press the grape on the score of economy, that none of the juice may be wasted. The brandies and wines, therefore, cannot be free from the impurities already mentioned. The brandies of

Gen. Naglee only lack age. The oldest which he now possesses is nearly of the age of two years. All of his older wines and brandies were destroyed, together with the distillery, by fire, on the twenty-fourth of February, 1869. It was the work of an incendiary. His loss thereby was not less than sixty thousand dollars, having no insurance. Notwithstanding his loss, he has rebuilt the premises, making them fireproof, and superior to the former ones. He has one wine tank of the capacity of sixteen thousand gallons.

A second-class brandy is made from wines produced from the pressed grapes. The principal part of the wines produced here are manufactured into brandies.

This county, and the country generally, is much indebted to Gen. Naglee for his experiments here made. He has shown to the world the value of this soil and climate to be infinitely beyond expectation for the successful production of first-class wines and brandies. It was no inviting task to risk so much in a pecuniary way to attest a doubtful, and somewhat hazardous, experiment.

Gen. Naglee is a man of great wealth, much of which sprang from his own resolute exertions in this country, and part of which came by inheritance from the rich estate of his father. It has been fortunate for the welfare and progress of this valley that he has thus been favored pecuniarily.

I have mentioned the premises of Mrs. Hensley and Gen. Naglee for the reason that they are the most extensive ones in this vicinity, and among the finest private grounds in the State. And I have specially observed the plants and growth thereof in the estate of Gen. Naglee, to illustrate the adaptation of this soil and climate to the growth of a wonderful variety of the vegetable kingdom, which are indigenous to every clime, from the equator to the poles.

Making general statements as to the productions of this climate might appear to strangers like random declarations. I have, therefore, referred to the premises which contain them, that persons unfamiliar with this climate may know where to turn for personal observations.

On the eighth of October of this year, a severe earthquake threw down some chimneys, but doing no material damage otherwise. It was of some benefit, in increasing the volume of water from the artesian wells.

The bridge across the Coyote creek, connecting Santa Clara street, was erected this year.

Gas was reduced from nine to eight dollars per thousand feet.

The San José "Daily and Weekly Courier" suspended publication on Saturday, November 5th.

The indebtedness of the city was entirely liquidated this year.

During the civil war, San José was not free from excitement. The two political parties of the country were not far apart in numbers. Madam Rumor kept busy at her usual vocation, and there was no want of fuel to feed the flames beneath the political cauldron. Rumors of midnight meetings of both parties were numerous. Opportunities presented themselves for gratifying revenge, and they were not passed by altogether unheeded. The town in this respect, however, was not different from others. Some arrests were made, and others would have been, had not the honest patriotism and good judgment of the Provost Marshal, Col. A. Jones Jackson, dictated otherwise. He is entitled, through the justness of his course during that unfortunate struggle, to the respect of this community in particular, and to that of the State generally.

CHAPTER XXII.

1866–1870.

Growth and Industry.—"Daily Patriot."—"San José Weekly Argus." —Earthquakes.—Death of Hendricks.—City Grants.—Bank of Knox and Beans.—Re-incorporation of City.—Sale of Part of Market Square.—Court-house.—Methodist Church.—City Vote. —Silkworms and Silk Looms.—San José Water Company.—Purchase of School Premises by City.—Building thereon.—Young Men's Christian Association.—County Bonds Purchased by the City.—City Vote.—New York Hotel.—Improvements.—Fall Vote. —Market Street Extended.—Bank of San José—San José Savings Bank.—City Vote.—"Daily Argus."—Horse Railroad to Santa Clara.—Severe Earthquake.—Railroad extended to Fifteen-Mile House.—Methodist Church Ground Sold.—Engine-house Lot purchased by City.—Methodist Church burned.—Railroad extended to Gilroy.—Receipts of Railroad Company for four years. —Improvement of Washington Square.—Murder of Mrs. Hauser. —Erection of Methodist Church.—Number of Scholars in the City.—Directory of City.—Location of Normal School.—City Funds.—City Vote.—"Daily Independent."—Consumption of Gas and Coal.—Number of City Consumers.—Woolen Manufacturing Company.—Opera House.—Opening Address and Play.—Normal School Building.—Laying of its Corner Stone.—Music Hall. —Jail.—Hose Company.—Present Condition of the City.—Schools. —Value of Property.—Assessments.—Fiscal condition of the City. General Appearance and Health of the City.

During the last five years we have witnessed an increase of population equal to the accumulation of the previous fifteen. We have observed with gratification and pride the busy haunts of industry becoming more diversified. In this county so noted for its agricultural and horticultural pursuits and wealth, we now behold the hammer and

the loom contending with success against the monopoly of eastern manufacturers. The raw materials, here in the land of their production, are checked in their continental transit, until home fabrication has prepared them for the uses of art and the wants of life. If we study with care the resources of this land,—a land with which nature has been prodigal with gifts—we will perceive various industries yet undeveloped, which, if pursued with economy, will be far more profitable than anticipation has even suggested. Then the artisan, the merchant, and the producer, as natural allies, upon principles of perfect reciprocity, will furnish each other, within our own confines, the resources of trade and the necessities of life, and administer to the wants of others now ignorant of our resources and capacities.

The improvements and increase of wealth and population, which I shall register as produced within this semi-decade of years, will evidence wonderful prosperity for this inland city.

January, 1866. On the first day of this month was issued the first number of the "Daily Patriot," by Mr. B. F. Murdoch as editor and proprietor.

On the sixth, Wm. A. January, as editor and proprietor, commenced to publish the "Santa Clara Argus," a weekly paper.

February 15th. Two shocks of earthquake, just about breakfast time, to settle the meal, appeared between eight and nine o'clock.

On this same day the prisoners escaped from the jail, one of whom killed Wm. H. Hendricks, the jailor, in the attempt to escape.

February 28th. The city council passed an ordinance setting forth the manner and mode of applying for titles to city lots under the Pueblo grant.

March 1st. Knox and Beans opened a private bank.

March 17th. The city was re-incorporated.

April. At the city election six hundred and fifteen votes were cast.

April 19th. The City passed an ordinance to sell portions of Market Square, outside of the plot drawn as the part to be reserved. The owners adjacent thereto were first entitled to the lands thus to be sold, at one dollar and a half per foot front.

The magnificent Court-house, the finest in the State, and next to the State house the most splendid edifice, was commenced this summer, and finished in 1868.

From whatever direction chance brings the visitor to San José, the first object that greets his eye is the strong-ribbed and gracefully-curved dome which surmounts this grand and spacious structure.

The earliest light which comes streaming through the pearly gates of Morn smiles upon its noble façäde, fashioned after the forms modeled by the artistic hand of Pericles, to adorn the Athenian city, to attract the Athenian gaze; and the last rays of the setting sun linger and play in rose and purple tints on its glassy dome.

This splendid edifice of the Roman Corinthian Order, is situated on the west side of First street, opposite St. James Square. Its foundation walls rest on a substructure of concrete extending six feet below the surface of the ground, and six feet in thickness. The lowest floor is supported by heavy brick arches. All of the walls are of brick. That of the basement is four feet thick; and above that, twenty-one inches. The building has two stories above the basement; one hundred feet front; one hundred and forty feet in depth including portico; height to cornice fifty-six feet: to top of dome one hundred and fifteen feet; to top of flag-staff one hundred and eighty-five feet; greater diameter of dome fifty feet; lesser diameter seventeen feet. Its columniated façäde, a hexastyle portico, is splendid. It exhibits ample evidence of the ability of the architect; his correct knowledge of intercolumniation, which is of vast importance, inasmuch as the heaviness or lightness of effect depends much upon the interspace; and also much rests upon the proper observance of the relative dimensions of cornice, frieze, and blocking course. It is indeed artistic in every particular, showing richness, elegance, and strength. The portico is seventy-six feet long and fifteen feet deep; height of columns thirty-eight feet, diameter four feet. It is flanked by four fluted pilasters supporting the entablature. On each side there are sixteen windows; the upper ones with pediments; the lower ones with arched

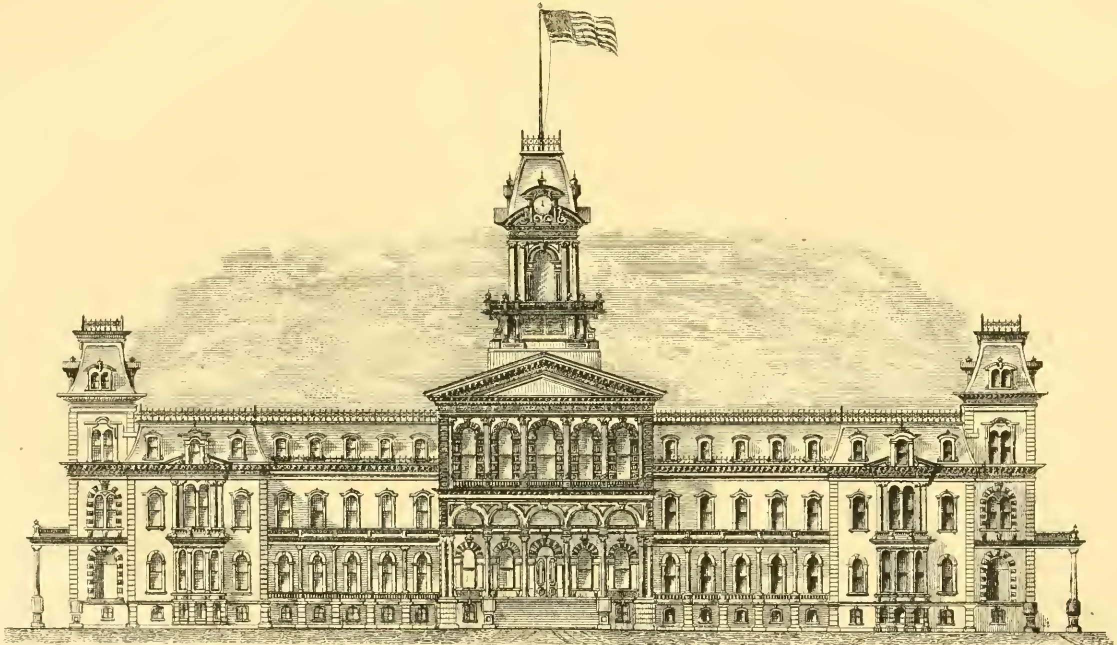
pediment heads. The windows are made of the the best French plate glass, manufactured expressly for this building. The façäde has the main entrance and fourteen windows. All of the window frames are highly ornamented, made of cast-iron, weighing three thousand pounds, with iron shutters of six hundred pounds; and supplied with interior blinds. The roof is covered with zinc. The dome is lighted by eleven elliptical windows, surmounted with an iron railing three and one half feet high; and is reached by a stairway of one hundred and seventy-two steps with three landings. The exterior of the edifice is cemented in imitation of stone. On the frieze is inscribed in high relief, "JUSTITIÆ DEDICATA."

The main entrance is by an ascent of nine feet, up thirteen granite steps, which lead to the iron door of the façäde, which is eight feet wide, and twelve high, and which is in two parts, that slide into the walls on each side respectively.

The building has twenty-one rooms, two of which are designed as court-rooms, and the others for the various county officers, all of which are well arranged and finely furnished. The principal court-room is sixty-five by forty-eight feet, and thirty-eight high, and is lighted mainly from the ceiling, which has twelve neatly ornamented and deep-sunken panels, set with ground glass. The ceiling is supported by fluted pilasters of the Corinthian and Ionic orders. Behind the forum is a recess

over which is written, "JUSTITIÆ ET CLEMENTIÆ." In the corners of the room are niches supplied with water for drinking purposes. The whole building is well supplied with water, gas, and all of the modern style of conveniences. It is heated by one of the largest sized Chilson furnaces, erected in the basement. It was built under the supervision of the able architect, Levi Goodrich, Esq., of this city. The cost of the building, furniture, and fixtures, up to June 13th, 1868, was one hundred and seventy-three thousand seven hundred and thirty-seven dollars and ninety-six cents. This noble and massive pile is a lasting monument of the wealth, the generosity, the taste, the pride, and the advancement of its contributors. From its lofty dome, what beauty, what grandeur present themselves! You may behold the city of San José sitting like a queen surrounded by her regal estate, in the fairest valley of the land, bathed in all the glory of the morning sun. Or, you may ascend there after the meridian of day, and behold all that splendor amid luxuriant foliage, flowers, fruit, and grain, yielding their graceful forms to the cadence of the afternoon breeze, while their mingled incense perfumes the purest and brightest of skies.

The Methodist Episcopal Church on the southwest corner of Second and Santa Clara streets, was erected this year. This was a frame building, formed in an elegant style. It was subsequently



A. L. Bancroft & Co. Lith S. F.

FRONT ELEVATION
of the
STATE NORMAL SCHOOL
SAN JOSE, CAL.

moved on to Second street, where it was burned, it was supposed, by an incendiary.

A fire-proof building was built on the west side of First street, near San Fernando, by Messrs. Haskel and Porter; it is ninety by sixty-nine feet in area, and two stories high.

On the same side of the same street, four other brick buildings were put up. One by Messrs. Strauss and Brown; one by Mr. Messing; one by S. A. Clark; and one by J. Stock.

During this year very considerable improvements were added to the city.

In the spring, the votes cast at the city election, numbered six hundred and fifteen.

Mr. L. Prevost raised one hundred thousand silk-worms.

Messrs. Neuman and Meyers received, from the East, twenty-five silk-looms.

November 26th. The San José Water Company was organized by Messrs. D. M. Kenzie and John Bonner, of San José, and A. Chabot, of Oakland, with a capital stock of one hundred thousand dollars. The company obtained the exclusive water privileges for the city of San José and town of Santa Clara, for the term of twenty-five years. They constructed tanks, engines, laid water-pipes through the main streets in San José, and supplied the city with water from artesian wells, for the term of two years and six months. The volume of water thus obtained was insufficient to meet

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the demand, and the right to the use of the water in Los Gatos creek was procured. A reorganization of the company took place on the twelfth of December, 1868, at which time the capital stock was increased to three hundred thousand dollars.

In November, 1869, the company commenced to build flumes and lay pipes, to convey the water from Los Gatos creek. In June, 1870, this water was thus conducted to the city. There has been constructed, and now in use, two miles of flume, and eight of thirteen-inch pipe to San José, and two miles of seven-inch, to Santa Clara. At about seven miles from San José, there is situate a reservoir with a capacity of two and one half millions of gallons. Within a distance of three and one half miles from the city; another is in process of construction, which is to have the capacity of three and one half millions of gallons. Twelve miles of the main pipe have been laid in San José, and it will be extended from time to time, as may be required. The officers of the company at present, are as follows: President, N. H. A. Mason; Treasurer, E. McLaughlin; Superintendent, C. H. Hobbs; Secretary, Wm. B. Rankin; Directors, N. H. A. Mason, A. Chabot, J. G. Bray, E. McLaughlin, and C. H. Hobbs.

1867. January. The City Council purchased a block of six fifty-vara lots, on the north side of Santa Clara, between Sixth and Seventh streets, at a cost of three thousand two hundred and fifty

dollars. On these premises, during this year, was constructed the splendid edifice which now stands there, for the common schools, at an expenditure of twenty thousand dollars. It has eight class rooms, fourteen feet high, also, an exhibition room in the attic fifty-eight by seventy feet in area, and seventeen high. It is well supplied with hat, dressing, and wash-rooms. The windows are hung with weights, and slide up and down like the sash, within the window frame. It is also well supplied with gas and water. Its capacity is sufficient to accommodate seven hundred pupils.

The Young Men's Christian Association was formed this spring.

March 12th. The city purchased with her school fund, thirty-seven thousand dollars of the county bonds.

April election for city officers, showed five hundred and forty-seven votes.

Martin Corcoran opened, about the 6th of July, his hotel on the west side of First, near St. John street. This is the New York Hotel, well kept by a man who served our country in the navy, and was taken prisoner in 1846, by the Mexican forces in the northern part of this valley.

Messrs. Levy Brothers commenced to build a two story fire-proof block on the southwest corner of First and Santa Clara streets. This structure has sixty-four and three quarters feet front on First street, and a depth of fifty-six and one half

feet on Santa Clara street. Adjoining this building, is one erected by John Bulback, on Santa Clara street, with a frontage of eighty-one and one third feet, and running back one hundred feet in part, and in part, only sixty-five. It is two stories high, with a capacity of four stores below, and numerous offices above.

Mr. Wilcox tore down a part of the Morgan House on First street, and erected instead thereof, a brick building with a front of twenty feet, and a depth of ninety. The lower part is used as a store, and the upper is occupied for hotel purposes.

July. The City Council appointed J. W. Cary to mark the names of the streets at the corners thereof.

September. The vote of San José was one thousand three hundred and forty-five.

Mr. Knoche erected a brick house on El Dorado street.

Dr. Knox built four brick stores on the west side of First, near Santa Clara street.

Calvin Martin erected three stores on the same side of the same street, adjoining those of Dr. Knox.

A large number of houses were built this year; and a general prosperity seemed to exist. There were scarcely any vacant houses; none in fact, that were well arranged for general conveniences.

1868. January 2d. The city voted to extend Market street through Market Square.

On the third Monday of this month, the Court occupied, for the first time, the new and magnificent Court-house.

March 1st. The Bank of San José opened this day, with a capital stock of two hundred and fifty thousand dollars.

Also, the San José Savings Bank, with a capital stock of one hundred thousand dollars. It was incorporated January 30th, of this year.

Mr. Martin Murphy built the brick stable on the south side of Santa Clara street, near the corner of Lightstone alley.

A fine brick building on the east side of First street, near El Dorado, was erected this spring.

The number of votes polled at the city election, was one thousand and eight.

Mr. Pfister built a brick house on the corner of Santa Clara and Second streets.

Geo. E. Houghton leased the San José Institute and Commercial College.

Prof. Hallam opened his Academy on Monday, August 10th, in Armory Hall.

On this day the first number of the "Daily Argus" was issued, and the last number November 7th.

Charles Otter built a brick house on the southwest corner of First and St. John streets. The

upper part of this building is occupied by Martin Corcoran, in connection with his hotel, adjoining.

The Legislature of this State, in March, of this year, granted a franchise to S. A. Bishop, Charles Silent, Daniel Murphy, D. B. Moody, and their associates, to build a horse-railroad from this city to Santa Clara, along the Alameda road. Murphy and Moody declined to avail themselves of the franchise. S. A. Bishop, John H. Moore, Charles Silent, Hiram Shartzer, B. Bryant, and D. W. Burnett, organized, and were elected Directors; from among whom were chosen officers, as follows: S. A. Bishop, President; John H. Moore, Treasurer; and Charles Silent, Secretary. The work on this road was commenced August 31st, and completed the first day of November, on which day the cars began to run from First street, in San José, to Main street, in Santa Clara, a distance of about three and one half miles. In August, 1869, the road was extended eastward along Santa Clara street, to the Coyote creek bridge, making the whole length of the railroad about five miles. This distance being too great for the horses, if used at the necessary speed, the company applied to the Board of Supervisors for the privilege of conducting the cars by steam, which was granted on the sixth of July, 1870.

October 21st. The severest earthquake ever known here.

The houses generally were rented; and it was

difficult to find vacant ones, except a few of small capacity.

1869. January. The San Francisco railroad was extended south to the Fifteen Mile House, on the eleventh.

During this month, the Methodist Episcopal church sold their ground at the corner of Santa Clara and Second streets, for the sum of sixteen thousand dollars, and moved the church building on to the west side of Second street, between Santa Clara and St. John.

The city purchased a lot on the east side of Second street, having twenty feet front, and fifty varas in depth, at a cost of one thousand six hundred dollars, for an engine house.

February 22d. A fire destroyed the Methodist church on Second street. The loss, including furniture, was eighteen thousand dollars. The insurance covered ten thousand.

March 13th. The railroad was extended farther south, to the town of Gilroy, a distance of thirty miles from this city, making the road eighty miles long, from San Francisco to Gilroy. The cost of the whole road was about two million five hundred thousand dollars. It was the most extensive successful enterprise ever undertaken in the State with private means. While on the subject of this railroad, I will here give an account of its receipts during a period of four years, commencing with the year 1866, as follows:

Amounts received on freight to San José.—1866, forty thousand three hundred and thirty-eight dollars and thirty-six cents; 1867, thirty-nine thousand eight hundred and fifty-five dollars and twenty-seven cents; 1868, forty-six thousand three hundred and thirteen dollars and twenty-four cents; 1869, fifty-nine thousand and seventy-one dollars and fifty-four cents.

Amounts on freight sent from San José.—1866, fifty-seven thousand and fifty dollars and thirty-two cents; 1867, seventy-nine thousand eight hundred and thirty-eight dollars and twenty-one cents; 1868, eighty-two thousand five hundred and eighty-nine dollars and eighty-five cents; 1869, forty-six thousand three hundred and fifty-six dollars and sixty-six cents.

The passage money going from San José, was on an average, two hundred dollars per day.

April. Washington Square was improved by a circular drive, being made at a cost of four hundred and thirty-five dollars.

C. T. Ryland built an additional brick-building two stories high, on his premises on the east side of First street, near San Fernando.

June 17th. The wife of John Hauser was found murdered. For which crime he was convicted in the following year of 1870.

July 18th. The Methodist denomination, having erected a new frame church on the same ground where the other was burned, to-day dedicated the

same; Bishop Kingley preaching the sermon. This church and furniture cost twenty-one thousand six hundred and sixty-five dollars and three cents. There being the sum of six thousand three hundred and five dollars and ninety-four cents unpaid, a subscription was taken which resulted in procuring the amount due, minus four hundred dollars.

August. The new brick building of H. M. Newhall, on the northeast corner of Santa Clara and Market streets was finished. The lot has sixty-eight feet ten and a half inches on Santa Clara street, and one hundred and ten feet on Market. It cost twenty thousand dollars, and the building thereon, fifty thousand dollars.

September. The township vote of San José was one thousand five hundred and fifty. The Catholic frame church was erected this year.

On the sixth of September, the cars ran through from Sacramento to this city.

December. The latter part of this month the City Council made some steps toward the improvement of St. James Square.

This year there were in the city of San José, one thousand five hundred and forty-two scholars between the ages of five and fifteen years; about one half of whom were boys. Under the age of five years, there were nine hundred and sixty-five. There were thirty negro children, fourteen of whom were boys.

1870. January 1st. The San José City Directory and Business Guide, of Santa Clara county, was issued by Messrs. Pomeroy and Calahan; the houses all having been numbered the year previous.

Amount in city treasury on the eighth, forty-nine thousand and thirty-seven dollars and twenty-nine cents.

March 11th. The final vote of the Legislature, on the permanent location of the Normal School, gave a majority of eight votes in favor of San José. Forty-seven votes in favor of this city, and thirty-nine for Napa.

April 1st. There were forty-two thousand nine hundred and thirteen dollars and forty cents in the city treasury; thirty-one thousand five hundred and forty-eight dollars and twenty-seven cents of which were Common School Fund.

On this day the Legislature passed a law for the government of the Fire Department of this city.

At the city election one thousand two hundred and twenty-six votes were polled.

May 17th. The "Daily Independent" was first issued to-day by Messrs. H. S. Foote and D. M. Adams. It has met with great success, and is increasing in circulation. It receives its telegraphic despatches from the East concurrently with the newspapers in San Francisco. It is the only morning daily in the county.

June 12th. During the last twelve months, the amount of gas consumed in the city, was three

million nine hundred and sixty-one thousand two hundred and seventy cubic feet; which required four hundred and seventy-four tons of coal. There were two hundred and eighty-five consumers and forty-one street lamps. The present price of gas is seven dollars per one thousand cubic feet.

July 21st. On this day appeared in the market, the first manufactured goods from the San José Woolen Manufacturing Company. The first goods were in the form of blankets, and of a superior quality. This company is incorporated; and was organized on the twenty-sixth of February, 1869. Its capital stock is two hundred thousand dollars. It commenced to run the mill on the thirteenth day of July, 1870. The building is situated nearly a mile north of Santa Clara street, and about on a line with San Pedro street. It is three stories high, and fifty by one hundred and ten feet in area, exclusive of engine and dye-houses, etc. It contains six sets of machinery of the best quality, and is worked by steam power. Its entire structure has been under the supervision of the Hon. R. J. Peckham, of this city. It has the capacity of making one hundred and forty-four thousand yards of cassimere, sixty-four thousand of flannel, and five thousand pairs of blankets per annum. It employs at the present time about forty-three hands. It is able to compete with the eastern market in the prices and qualities of its manufactures.

August 18th. Brohaska's Opera House was opened for the first time this evening. It is situated on the north side of Santa Clara street, between Second and Third, and will contain about fifteen hundred persons. It is an elegant theatrical house, and spacious for a city of the population of San José. It is ninety-seven by sixty-four feet, with dress circle capable of accommodating four hundred and fifty persons. It was erected during the present year. Miss M. E. Gordon, (Mrs. John T. Raymond), made the first appearance on the stage, and read, in a clear and easy manner to a crowded audience, the opening address, written by the author of this work, and which is as follows:

"Friends of the Stage:--To-night you throng this fair fabric to witness its consecration to the realm of the Muse. It is reared, not like Nero's palace all shining with gold, but adorned with Modesty's hand, in the fairest valley of the Golden State: in the beautiful city that sits like an islet of flowers in a sea of golden grain, beneath a pure and genial sky.

"This edifice and your presence, alike attest your unwillingness to refuse tribute to the scenic art. May it stand as a monument of your respect for dramatic skill, as a shrine for dramatic genius. You dwell in the land of the vine and fig tree, cultivating the soil; a pursuit which is the true foundation of the riches of State, and which leads the human mind to industry, noble thoughts

and noble deeds. Surrounded too by literary institutes thickly clustered, archipélago-like; where youth is reared to that standard of refinement and virtue which appreciates in a high degree of excellence the productions of the drama, and knows

Virtuous plays where the Muses dwell
Charm the soul with a magic spell.

"When Athens gave laws to the whole world, her theatres were thronged with admiring eyes and listening ears. The polished Grecians assembled before the stage to listen to the voice of eloquence, wit, poesy and mirth, and words that were sparks of Immortality. In the drama you behold the glowing portraits of life, as portrayed by the immortal genius of Shakspeare, so true to nature, and which have been so beautifully reflected by the actor's mind on the stage, as to betray the full splendor of the original orb itself. While we, whose mother tongue is English, hold in proud remembrance the name of that immortal bard, you, of Germanic speech, may well flush with pride at the names of Lessing, Goethe, and Schiller.

"When the day's labor is over, when fatigued from continuous toil, well may you seek repose in the shades of wit, where it is designed

"To wake the soul by tender stroke of art,
To raise the genius, and to mend the heart;
To make mankind in conscious virtue bold,
Live o'er each scene, and be what they behold!"

"Lovers of the drama, you to whom we look for praise or indulgence, remember that our task is a difficult one. We must please not one, but the many; and he or she, on whom the public gaze, has no easy fate, but many trying moments. Reflect before you condemn—try us not by the standard of a Garrick, whose matchless powers entwined his name with that of the "Great Dramatist," in a wreath of immortality. If we shine as lesser lights, we hope, not too faintly, to exhibit a fair representation of what is dignified, noble and grand in human nature.

"As you harvest your rich fields of grain—as the staff of life, and sip liquids from the clustered grapes, sweet to the taste and sparkling to the eye—so may you often come here for the harvest, where you may, perchance, gather clusters of thought, which will be sweet to the soul, and will gem the chambers of Memory bright as the pavement of heaven.

"Receive OUR hearty welcome; may we be true to "Nature, History and you," and may our faithful exertions win your honest smiles, and frequent presence."

Then followed the play of "London Assurance," Miss Gordon playing the role of Lady Gay Spanker, and Mr. Raymond that of Mark Meddle.

August 23d. The Jewish Synagogue was this day dedicated.

August 31st. A fire destroyed two wooden buildings on Santa Clara street, opposite the Auzerais House. A brick building is now in process of erection on the same site.

Washington Square is situated in a central position, and bounded by the following streets: On the north by San Fernando, on the east by Seventh, on the south by San Carlos, and on the west by Fourth. It is eleven hundred and sixty feet long, and one thousand and five wide. It is dotted here and there by shrubs and trees, which time will soon form into a beautiful grove; and, as they are fed with the sparkling waters that gush up from its deep-sunken wells, they will become garnished with verdant foliage, golden fruit, and variegated blossoms that will scent the ambient air with sweet perfumes, gladden and freshen the hearts of the daily visitors that are wont to frequent its attractive grounds.

In the centre of the Square, is now in process of erection the California State Normal School building. This edifice will stand facing westward, that the inmates of the palatial pile, whose sight may become wearied by the view of man's printed theory of nature, may, at the closing hour of study, be refreshened by a glance at Nature herself; in beholding the setting sun as he leads away the parting day, and leaves behind a train of gorgeous imagery, in rose, purple, and golden tints arrayed in awful majesty athwart the living sky;

beneath which, the serrated mountains, azured in the dye of distance, seem the supporting columns of the heavenly dome.

The following is a description of the edifice when completed, according to the plan of the architect: Length of whole façade, two hundred and eighty-four feet, exclusive of verandas; and, including them, three hundred and fourteen. The main building will be one hundred and sixty feet deep, exclusive of verandas; and, inclusive of them, two hundred and twenty-nine; and surmounted by a tower, one hundred and fifty-two feet high. Its height to top of cornice, seventy feet; its order, Corinthian. Its portico will be supported by ten Corinthian columns; the frieze, cornice, and tower, by Corinthian pilasters. Its tower may be used as an observatory, having an easy access by a flight of stairs. It will contain a clock, and on its four respective sides a dial. The two buildings, respectively, on the sides of the main one, will be seventy feet deep, exclusive of verandas. The two wings are respectively, one hundred feet long, and each surmounted by a tower in their central front, eighteen feet square, and ninety-three high. The side and wings will be sixty-seven feet high to top of roof, and their style composite or modern.

The basement will be ten feet high in the clear, and contain rooms for play, laboratory and chemicals; chemical class, janitor, heating apparatus;

vault for chemicals; heating vaults, for ventilation; coal, fuel, dust, and ash vaults. The second story will be seventeen feet high in the clear, and contain rooms for classes connected by ante-rooms; study rooms; rooms and parlors for reception; principal office, with clerk's office; recorder's room, with fire-proof safe; committee rooms; rooms for reference, library, and maps, instruments and apparatus; two wash and two toilet-rooms, with six water-closets each. The third story will contain class, recitation, music, society, and study-rooms; museum; and the principal hall, denominated the Normal School Hall, for exhibitions; which will be in the central part of the building, and ninety-one by sixty-six feet in area, and forty high; and will accommodate about nine hundred persons. The floor will be inclined; the gallery seats will face the centre of the stage, at right angles; and, in this respect, is different from any other. The advantage arising therefrom, is, that every seat will have a fair view of the stage. The lower floor of this hall, and the gallery, will contain each four aisles. Four stairways lead to the lower floor, and an equal number to the gallery, making ingress and egress, in case of accident, quite easy. Connected therewith, will be two wardrobes and lobbies; drawing-rooms and water-closets. The stage will be oval, with a central width of twenty feet, and length forty-four. The fourth story attics of side and wings, will be of mansard roof.

The central part, in front of the principal hall, will have a corridor; there will be a library thirty-two by sixty-six feet in area, and twenty-four in height, with galleries on three sides; two society halls; two halls for gymnastics; rooms for miscellaneous purposes; dressing and washing-rooms, and water-closets. The corridors and passage-ways vary from eight to twenty-three feet wide. There will be six exterior entrances to the first story above the basement, each with a flight of stairs; six interior flights of stairs from basement to fourth story, with landings at the respective floors; two flights of stairs from upper story to the tower; thence up the tower, one flight. There will be five principal ventilators, each having forty-five square feet of opening.

The principal hall will be ventilated through the ceiling, and by flues through the walls. The space between the gallery and all other rooms throughout the building will be ventilated by flues set in the walls. Every department will be supplied with fresh air, by means of tubes passing through the walls and floors. and so as to be adjusted as may be desired. The outer walls will be cooled in summer by ventilators, with regulators attached.

The heating will be done principally by steam and hot water; some rooms will have fire-places and grates. The whole building will be lighted by gas. The supply of water will be over-abundant.

There will be two tanks, containing over four thousand gallons each, placed between ceiling and roof of upper story. There will be fifteen fire-offices supplied with fire apparatus, and an abundance of hose. Also, there will be four hydrants outside and close to the building.

The sewerage will be well made—none can be better. Materials: Foundation will be of concrete; the walls, partitions of basement, vaults, chimneys, and flues of hard-burnt brick. All other work will be of wood, save some wrought and cast iron work.

This edifice when finished will be an ornament to the city, and a lasting proof of the skill of its architect. All the apartments are so well arranged as to convenience, safety in case of fire, by the opportunities of a rapid and easy egress, and by the excellent extinguishing apparatus, together with the more than ample supply of water, that no danger may be apprehended from the burning elements.

Mr. Theodore Lenzen is the architect, and is assisted by the artistic draftsman, Mr. Frederick Erle. Mr. P. W. Reardon is superintendent of construction. The Rev. O. P. Fitzgerald is State Superintendent of Public Instruction, and is a gentleman of much ability, of great popularity, and exceedingly well qualified and well adapted to the position, which he has held with much satisfaction to the schools, and to the public generally.

The board of trustees is composed as follows: his excellency Governor H. H. Haight, Reverend O. P. Fitzgerald, — Denman, Superintendent of Public Schools in San Francisco, Hon. C. P. Ryland, H. O. Weller, Esq., and Mr. John H. Braley, Superintendent of the Public Schools in Santa Clara county; the three last mentioned being residents of this county.

The ceremony of laying the corner stone of this edifice took place on the twentieth of October, 1870. It was conducted by the officers of the Grand Lodge of the State, assisted by Howard Chapter of Royal Arch Masons; and San José Encampment, No. 35, of I. O. O. F.

The contents of the box deposited beneath the corner stone are as follows:

Third Biennial Report of the Superintendent of Public Instruction for 1868-9, printed; California School Laws, printed; The California Teachers' first, second, and third grade Certificates; State Educational Diploma; Life Diploma of Public Instruction; Normal School Diploma of the State of California; Constitution of the Grand Lodge, F. and A. M.: Proceedings of the M. W. G. of California, A. L. 5869; Rules and Regulations of the Odd Fellows' Library Association, San José; Proceedings of R. W. G. Lodge, I. O. O. F., 1868; Holy Bible printed in 1868; "San José Daily Independent," Oct. 19th, 1870; "San José Daily Patriot," Oct. 19th, 1870; "San José Weekly Mercury,"

Oct. 20th, 1870; "Santa Clara Argus, Oct. 15th, 1870; "San Francisco Bulletin," Oct. 19th, 1870; "San Francisco Chronicle, October 20th, 1870; "San Francisco New Age," October, 1st, 8th, and 15th, 1870; "San Francisco Daily Alta," Oct. 20th, 1870; "San Francisco Abend Post," Oct. 10th, 1870; "San Diego Bulletin," Oct. 10th, 1870; "San Diego Union," Oct. 10th, 1870; Copy of City Charter of San José, 1856; Constitution and By-Laws of the Empire Engine Company, organized 1854; Constitution and By-Laws of the Hook and Ladder Company, organized in 1851; American half dollar, 1870, inscribed "P. W. Reardon, Superintendent of the California State Normal School Building;" American silver dollar, inscribed, "Corner Stone laid Oct. 20th, 1870, by the Officers of the Order of F. and A. M., T. Lenzen, architect and principal overseer, F. Erle, assistant draughtsman of the California State Normal School Building;" The proceedings of the laying of the corner stone of the Catholic Church, written in Spanish, 1803; copy of the foundation of the first public school in San José, Oct. 26th, 1811, written in Spanish; various samples of silk, cocoons, thread, etc., by Joseph Newman; a ticket to the Grand Industrial Fair of Nevada City, Cal., No. 3199, the proceeds, should the ticket draw a prize, to be donated to the State Normal School, placed by the agent, San José; a certificate of membership of the Santa Clara V. A. Society of Pedro de Saisset;

Copy of Constitution and By-Laws of the Firemen's Charitable Association; Constitution and By-Laws of the Torrent Engine Company, No. 2, organized 1856.

After the special ceremonies of the officers of the Lodge were completed, the Rev. O. P. Fitzgerald delivered a very able address, and thus ended the proceedings. The young ladies of the Normal School, from San Francisco, the children of the Common Schools of this city, and a large concourse of the citizens of the valley were present, all escorted to and from the premises by a band discoursing sweet music.

The Musical Hall, on the east side of First street, standing on the site of the old Mansion House, was finished this fall. It is finely finished, having a large concert-hall in the second story, which may be used for theatrical entertainments and dancing. The remaining portions of the upper story is occupied as offices, and the lower part as stores. It is an ornament and a great convenience to the city. It was built by Mr. Sidney M. Smith, under the directions of Charles D. Bugbee, as architect.

A brick jail in now in course of erection, in the rear of the Court-house. Its dimensions are one hundred and twenty feet long, by forty-two in width, and twenty-five high; with an ell forty-two by forty-two feet, three stories high. The materials are brick, stone, and iron. There will be an

office for the jailer, and all necessary conveniences. The cost will not be less than fifty thousand dollars, and probably nearly sixty thousand. It will be, when finished, the best arranged and strongest prison in the State. The construction is under the direction of Levi Goodrich, Esq., architect.

This fall was organized Washington Hose Company, No. 1. The mansion of Mrs. Samuel J. Hensley, situated within her elegant grounds, was completely destroyed by fire on Saturday morning, at half-past three o'clock, November 26th, 1870. The gardener came home intoxicated, and it is supposed that through carelessness he set his bed on fire. Nothing was saved except one picture and some valuable jewelry. The gardener perished in the flames.

During the last of November, and the first part of December, the sidewalk on the north side of Santa Clara street, between Market and First, was extended to sixteen feet in width, laid with brick, covered with asphaltum, and curbed with granite.

The township of San José contains twelve thousand five hundred and twenty-five inhabitants; two thousand five hundred and forty-seven families; and two thousand six hundred and sixty-one houses. Within the city limits, the population numbers nine thousand one hundred and eighteen. The value of real estate in the township is estimated to be sixteen millions nine hundred and

thirty-one thousand and forty-four dollars; personal property, six million three hundred and twelve thousand seven hundred and eighty-seven dollars.

All the streets of importance are well graded, graveled, and curbed; having gutters, sewers, and open drains. It is true, at present, the sewerage is not so good as it ought to be, but it can be remedied, and measures for that purpose will soon be undertaken.

The city has a well-organized Fire Department, of which James V. Tisdall is Chief Engineer. The Department embraces four companies, as follows: two engine, one hook and ladder, and one hose.

The supply of water is ample. The numerous artesian wells, and the streams from the mountains, which run to the city through the pipes of the Water Company, ensure a great supply of that element for all purposes whatsoever.

There are eight churches in the city, denominated as follows: One Roman Catholic, one Presbyterian, one Baptist, two Methodist, one German Methodist, one Episcopal, one of the Evangelical Lutheran. Also, a Unity Congregation, who have no church building, but have regular service in one of the public halls.

There are six buildings for public schools within the city. The value of the premises is not less than about seventy thousand dollars, exclusive

of furniture; and with the furniture, eighty thousand dollars.

There is now on hand school funds to the amount of twenty thousand dollars.

There is no town so well provided with schools in the State; nor any town with such an amount of school funds. All the moneys derived from the sales of Pueblo lands, that is, land belonging to the city, are placed in the school fund.

The advantage of obtaining books here is great. There are several book-stores in the city, which are supplied with large assortments. One in particular, that of Mr. A. Waldteufel, contains the best assortment of books in every department of learning to be found in any city of the United States, of the size of San José. I speak of it as a remarkable fact, and one of great convenience to the valley.

The value of property assessed in the city for the year 1869, was three million seven hundred and nine thousand and fifty dollars, divided as follows: Land, one million two hundred and eighteen thousand three hundred and sixty-five dollars; improvements, one million one hundred and eighty-two thousand six hundred and forty-five dollars; personal property, one million three hundred and eight thousand and fifty dollars. The rate of assessment that year, was one dollar and twenty cents on the hundred dollars.

For the present year, the value of property and assessments were as follows: Total amount assessed, three million nine hundred and ninety-one thousand nine hundred and ten dollars, divided thus; Land, one million four hundred and ninety-five thousand three hundred dollars; improvements, one million three hundred and eighty-two thousand one hundred and forty dollars; personal property, one million one hundred and fourteen thousand four hundred and seventy dollars.

The rate of assessment was one dollar and five cents on the hundred dollars. The revenue thus received has been divided and appropriated in the following proportions: For school purposes, thirty-five per cent.; Fire Department, twenty per cent.; general purposes, forty per cent.; sewerage, ten per cent.

The improvements in the streets which are continually going on, as demanded by the growth of the city, are explanatory of a good share of the expenditures.

The assessment is generally fixed on an amount equal to about one third of the real value of the land, and from one half to two thirds of the value of the improvements.

The city is out of debt, and has been since the year 1865. It has on hand over forty thousand dollars, one half of which belongs to the school fund.

Three weekly and two daily papers, are published in this city, namely, the "Santa Clara Argus," the "San José Patriot," and the "San José Mercury," issued weekly; and the "Daily Independent," a morning, and the San José "Daily Patriot," an evening paper.

I have recounted the dates of the fabrication of most of the main brick buildings, and those in the nature of public buildings, independent of their materials. It could not be expected that the erection of every building in the city would be noted; but it may not be uninteresting in after years, to review the growth of the city, step by step, by a glance at the respective dates of commercial houses, and those of general business, which may give some idea of the gradual advancement of this thriving inland city. The great and important acts of the people have been mentioned, though some, perhaps, have been disregarded, which were of equal importance with many of those recorded. It would be more than would be expected, that every crime and punishment, every little excitement which chanced to stir the community, should be herein set forth. I have been more particular to record the crimes in the earlier history of the town, in order to illustrate the moral condition of the general community, at a time when the social laws and regulations were more than usually at variance with the settled state of affairs in the older parts of our nation. However

incomplete my annals may be, they cannot fail to present some general idea of the changes and progress of this opulent and pleasant city. In its social and financial conditions, and in its general advantages, it is scarcely surpassed by any city of its compass. The fame of its climate, of which I shall say more, has become world-wide.

Here nestles the Queen City amid

"The pomp of groves, and garniture of fields"

in the lap of a luxuriant elliptical valley, freshened by innumerable artificial springs, fringed by two murmuring streams, the Gaudalupe and Coyote, and embraced by gently sloping mountains mantled with verdure, which, ere long, will be adorned with the clustered vine—rich vegetation—their crests crowned with floral diadems, basking in the earliest light of morn, and vieing in beauty, fragrance and splendor, with the loveliest flowers of the dale.

This enchanting spot allures the visitor to stay and inhale the freshness of a balmy clime, where health seldom fails to paint the human cheek with the bloom of the morning rose.

CHAPTER XXIII.

THE PUEBLO LAND TITLE.

Law Defining Pueblos.—Act of Congress, March 3d, 1851.—Action of the Board of Land Commissioners.—Testimony.—Confirmation of Four Square Leagues to the City.—Appeal to U. S. District Court, and Reversal.—Appeal to U. S. Supreme Court.—Final Decree of Confirmation to the City, of Amount Claimed.—The Land Company's Claim to the Pueblo Lands.—Survey of Pueblo Lands.—Map.

The history of San José would be incomplete, indeed, without a succinct narration of the facts and law in support of the title, upon which rest the claims to all the rich and fertile domain embraced within the confines of the Pueblo. I shall, therefore, proceed to recount and explain the links which form its chain.

A Pueblo may be termed a Town, corporate and politic. It was enacted by an ordinance of King Philip the Second, of Spain, that a Pueblo should contain four square leagues of land, to be measured in a square, or, in a prolonged parallelogram, if the topography thereof did not permit a square form, so as to be useful and convenient for the settlers.

This ordinance was, of course, passed in the sixteenth century, as Phillip died in 1598. It

will be found in the Recopilacion de Leyes de los Reynos de las Indias, Lib. IV, Tit. V, Ley 6. (Vol. II, fol. 89, Madrid edition of 1774.) This law has been ever since recognized as in force by the Hispano-American jurisprudence.

No grant was ever made to a Pueblo by the Spanish Government, as is made to an individual. A settlement was made by virtue of a special decree or order to that effect; or by settlers under the law regulating the founding of Pueblos, which acts were then approved by a royal decree, having the full force and effect of an absolute grant for the purposes intended. A Pueblo, as a body corporate, did not hold the fee in the land, but, rather a right analogous to an easement of the common law of England.

The Congress of the United States, on the third of March, 1851, passed a law for the settlement of private land claims in California, wherein it was declared that the existence of a town in California, on the seventh day of July, 1846, should be considered as, *prima facie*, presumptive evidence of a grant to said town, of all the land within its boundaries. San José, having existed long anterior to that date, as we have seen, was legally entitled to the land within her boundaries; and the main question to be ascertained, in the settlement of the Pueblo claim, was the limits and extent of those boundaries. Another important question was presented, namely, whether the city

of San José was the proper claimant, or the Land Company, known in this county by the fanciful name of the "Forty Thieves."

I shall explain the title or claim of the Land Company to the Pueblo lands, after having completed the history of the Pueblo title proper.

On the twenty-seventh of March, 1850, the Legislature of the State of California, passed an Act, incorporating the city of San José, and declared that the city should succeed to the legal right and claims of the Pueblo of San José, and should be subject to all the liabilities incurred, and obligations created by the Ayuntamiento of said Pueblo, but not to exercise municipal authority over the territory not embraced within the city limits.

On the fourteenth day of July, 1852, the Land Company filed their petition before the United States Board of Land Commissioners, asking for a confirmation of the San José Pueblo lands to them. The petition was in the name of Charles White and Isaac Branham, as Trustees for Charles White, James F. Reed, Isaac Branham, Josiah Belden, Henry Clarkson, H. C. Melone, Joseph Aram, James M. Jones and Jacob D. Hoppe, all of whom composed the Land Company.

The claim of the Land Company was rejected. The Land Commission held that under the law of Congress of March 3d, 1851, such a claim, if valid, must be confirmed to the city authorities,

and that such a confirmation would enure to the benefit of all those persons holding under the city.

The Mayor and Common Council of the city of San José, also filed a petition before the Land Commission, praying for a confirmation of the Pueblo lands to them, as a body corporate, in trust for the citizens of San José.

The Board of Commissioners confirmed to the city, on the fifth of February, 1856, not what they prayed for, but four square leagues of land, bounded on the north and south by two parallel lines, each two leagues in length, and running due east and west; and on the east and west by two parallel lines, each two leagues in length, and running due north and south; said boundary line being so drawn that their respective centres should be in a direction due north, south, east, and west, from the centre of the Plaza of the city of San José, and each the distance of one league from the same; excepting such portion of said area as is situated on the side of the river Guadalupe, opposite to the said city, and making said river the boundary line on that side of said area, instead of the line above mentioned.

The city appealed from this decision, to the United States District Court, upon the ground that the area of land confirmed should have been to the extent prayed for in the petition.

The Land Company took an appeal to the U. S. District Court, from the judgment rendered in

their case by the Land Commissioners. Finally, by consent, this case was dismissed; and the testimony taken in the case of the Land Company, was used in favor of the city, in the case of the Mayor and Common Council vs. United States, in the U. S. District Court. In the latter case, Salvio Pacheco testified, that William Gulnac, William Castro, and himself, were appointed commissioners to lay off the boundaries of the Pueblo; that they executed the commission, and reported to the government, in relation thereto; that he had heard his father and grand-father say that the boundaries of the settlement of the Pueblo, were from the white bluff near the Mission of San José to the crossing of the road of Santa Cruz at a point called —— de los Gatos; that he did not learn from them any other boundaries; but afterwards, he understood that, at the instance of the priests of Santa Clara, the river Guadalupe was established as a boundary; that they as a commission, in accordance with that understanding, declared the river as a boundary line. Upon further interrogation, he remarked that he had heard his father say that Las Llagas was a boundary of the Pueblo; that when they as commissioners established the boundaries, they found landmarks, at the source of the river Guadalupe, and at the Puerta de los Capitancillos. At this place, he says they found heaps of stone placed as landmarks by their forefathers; but the other boundaries they ascertained by common report;

which were the embarcadero (landing) of Santa Clara on the northerly side, and on the southerly, the arroyo of San Francisco de las Llagas. Continuing his testimony in relation to the occupancy of the Pueblo lands, he states, that the inhabitants of San José had owned the land within those boundaries ever since he could recollect; that the inhabitants occupied the land with thousands of cattle and horses; made use of the timber for building and for fuel, and cultivated portions of it; they occupied it in common, and once a week or about every ten days, they were ordered by the magistrate to collect the stock; each one of the owners selecting his respective animals. He further states that the inhabitants from year to year, as they desired, by leave of the magistrate, enclosed small portions of the land for cultivation; that one piece would be cultivated by one man for one year, then be abandoned for another tract; that he did not know of any instance where an individual had purchased any of the land; but they rented from the magistrate; and that, after a long occupation, some had applied to the Governor and obtained grants therefor.

Some other testimony was adduced to the like effect, whereupon the District Court, on the sixth of August, 1857, reversed that part of the decision of the Land Commissioners pertaining to the boundaries, and confirmed to the city the Pueblo lands as prayed for, and which are described in

the said decree as follows: "That the boundaries of said claim, being the same with those of the former Pueblo of San José, ascertained and surveyed as follows: Beginning at a point in the woods, at a live-oak tree on the dividing line between said Pueblo and what were formerly known as the lands of the Mission of San José, and if said tree is gone, where the same was in March, 1838; running thence a southeast course, which passes through the mountains that are called Las Buellas, Pala, San Filipe, Las Animas, and Agua de las Llagas, to a monument of stone erected in March, 1838; and having reference to all the landmarks on this line, and to the monument of stone in the middle of the Pala. This line is in length eleven and a half leagues, and its southern termination the southeastern corner of the ancient limits of the said Pueblo, and of the land hereby confirmed to the claimants. Then commencing again at the point first mentioned, being the said live-oak tree, or its former situation, and running a line from the northeast-by-east to southwest-by-west to the embarcadero of the Guadulupe, to the last live-oak which is seen on the bank of the river Guadalupe, or where the same was in March, 1838, being two leagues and eight hundred varas for the length of this line, and the same passing near the house formerly occupied by José Higuerra, and distant from it four hundred and ten varas, the house being on the northerly side of

this line; thence up the river Guadalupe, to its source; and thence running with a line corresponding with the course of said river, as near as may be, and which is nearly from southeast to northwest, and having reference to monuments of stone formerly placed on this line, the last of which and the termination of this line was placed on the apex of a little hill which is at the foot of the mountains called 'Parage de Capitancillos,' including part of the oak grove now or formerly at this place, and including all the willow grove now or formerly at the source of the said river; thence from said point at the foot of said mountain, De los Capitancillos to the creek called Llagas, at or near its source, and at such point as will make the distance from where said line strikes said creek to the southeastern point before ascertained, the same length as the distance from the standing-point in the survey to the embarcadero, that is, two leagues and eight hundred varas; thence from said point last ascertained, to the southeastern corner of the said tract before ascertained. In making the survey ascertaining the preceding lines, reference will be had to the survey and map of the boundaries of said Pueblo made by the Commissioners Castro; Gulnac, and Salvio Pacheco, in March, 1838; and to the survey of Joseph Arguello, under date of the twenty-fourth of July, 1801, signed also by the Friar Martin de Landoetoe and José Asuna; and to the documents and

depositions in the cause, as to the ancient boundaries of said Pueblo of San José."

On the second of December following, this decree was vacated by an order of Court, on motion of U. S. District-Attorney, and on the twenty-sixth of November, 1859, the said order of December second was set aside, and the decree of August 6th, 1857, ratified, and to have the same effect as if the same had not been vacated.

From this decree of confirmation by the District Court, the United States appealed to the U. S. Supreme Court. At the December term of 1863, of this court, the counsel for the city of San José, moved that the said appeal be dismissed; whereupon, by order of the Court, the following order was entered: "And it appearing that the said appellants have failed to have their cause filed and docketed, in conformity with the rules of this Court, it is now hereby ordered, adjudged, and decreed by this Court, that this appeal from the District Court of the United States for the Northern District of California, be, and the same is, hereby dismissed, and that this cause be, and the same is, hereby remanded to the said District Court." This order was certified as bearing date February 5th, 1864. This mandate of the Supreme Court was filed in the District Court, November 11th, 1864. At the December term of the Supreme Court of the United States, the case was reinstated upon the docket. On a

written stipulation of the counsel for the respective parties, and on motion of counsel for the appellant, the decree of dismissal was set aside, and a decree of confirmation rendered for the city of San José, with the ancient boundaries as set forth in the decree rendered by the District Court, excepting therefrom the following grants: Las Milpitas, Rincon de los Esteros, Pala, Yerba Buena, Cañada de Pala, San Felipe de las Animas, Laguna Seca, Santa Teresa, San Juan Bautista, Los Capitancillos, San Vicent, Las Uvas, Ojo Agua de la Coche, San Francisco de las Llagas; and also, such other parcels of land as have been by grants from lawful authority vested in private proprietorship, and have been finally confirmed to parties claiming under said grants, by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming there under, by said tribunals, in proceedings now pending therein for that purpose; all of which said excepted parcels of land are included in whole, or in part, within the boundaries above mentioned, but are excluded from the confirmation to the Mayor and Common Council of the city of San José. This confirmation is in trust for the benefit of the holders under grants from the Pueblo, town or city of San José, or other competent authority; and to any residue in trust, for the use and benefit of the inhabitants of the city. This decree bears date April 3d, 1866. The mandate of the U. S.

Supreme Court, embracing this decree, was filed in the U. S. District Court, San Francisco, on the thirteenth day of June, 1866.

We have, thus far, seen a final confirmation to the city for the Pueblo claim, eleven and a half leagues long, by two leagues and eight hundred varas wide. The reader will naturally ask under what law did the Court confirm to that extent, when the law of Spain cited in this work, as being now in force, declares that four square leagues shall be the extent of a Pueblo?

We have already read the decision of the Board of Land Commissioners, composed of able judges, who gave it as their deliberate opinion, that the Pueblo limits should not extend beyond four square leagues. The District Court, upon the evidence of witnesses, who testified that they heard their fathers and forefathers say that the limits of the Pueblo were, according to the survey made in March, 1838, decided that the city was entitled to the land embraced within that survey. With all due respect to the opinion of the learned Judge who decided the case, I think it would be as difficult to find any law in support thereof, as to find the philosopher's stone. The reader may again ask, how did the Supreme Court of the United States likewise confirm the title to the same extent? The answer is easily given. In the first place, the case went off the docket of that Court, by the inattention of the U. S. Attorney-General.

It was re-instated by the consent of counsel, and the decree below affirmed, with the exceptions therein specified. And thus the merits of the case was neither argued by counsel, nor examined by the Court. It was, virtually, obtaining a judgment by default.

But, be that as it may, I am of opinion that the result of the decision has been beneficial to this valley. If the Pueblo had not obtained the land beyond the four square leagues, the government would have been the owner of the vacant portions thereof. And I apprehend that the majority of the people within the county, are not much dissatisfied with the decision of the Court, be it law or not.

As I have now fully recounted the history of the Pueblo title, I shall proceed to trace the claim thereto of the Land Company, known as the "Forty Thieves."

The city authorities of San José, sold the house occupied by the legislature, to the county, for thirty-eight thousand dollars, payable in three months, with interest at the rate of four and one half per cent. per month; and directed the proceeds of this sale to be applied toward the payment of the debt due to the trustess, Aram, Belden and Reed; the city did not so appropriate said funds, but used them for other purposes. These trustees in consequence thereof, sued the city to foreclose the mortgage made by the Ayuntamiento, in December, 1850, and obtained a de-

cree, under which the Pueblo lands were sold by the sheriff, and bid in by Branham and White as trustees of the plaintiffs therein. They bid about two thousand dollars above the amount of the judgment, which overplus went into the city treasury. These parties plaintiff had made themselves liable for the benefit of the Pueblo, in order to comply with the promise the citizens had made to the State Convention; namely, to have prepared a proper house for the sitting of the first legislature. The house could not have been obtained on the credit of the Pueblo. These citizens then came forward and purchased it, the value of which subsequently went into the city treasury. They desired to make themselves secure. They formed themselves into a joint-stock company, the stock of which was divided first into ten shares; White and Reed having each two shares. Subsequently, the stock was divided into eleven shares; one of which, H. C. Melone purchased.

The Pueblo lands so purchased at the sheriff's sale, became the stock of this joint-stock association. As some difference of opinion arose between the city authorities and this company, the City Council by ordinance, authorized the Mayor to make some settlement with them. Under that ordinance a contract was entered into between the city and the company. It was agreed, among other things in the contract, that the trustees of the company and the Mayor, should conjointly sell the Pueblo

lands, in such a manner as to reimburse the company for the amount paid by them at the sale; that is, the amount of judgment and overplus paid, and all costs. This contract was duly ratified by the Common Council of the city, and the Mayor was directed to carry the same into effect. Subsequently, the city refused to acknowledge the contract as binding on her part; and thereafter conveyed her right and title to the Commission of the Funded Debt of the city. The Land Company perceiving that the city was determined to adhere to the position assumed by the Mayor and Common Council, brought a suit against the city to quiet the title to the Pueblo lands. The Supreme Court decided that the plaintiff had no right to the land, for various reasons set out in the opinion of the Court. [See Appendix, No. 4.]

The Court held that the Ayuntamiento (Common Council,) of the Pueblo, had no power to execute a mortgage; that a subsequent ratification by the Mayor and Common Council of the city of San José was invalid; and that the whole proceedings under the decree of foreclosure were null.

The Legislature of the State passed an Act on the seventeenth of March, 1866, re-incorporating the city of San José. A part of section seventy-three of said Act reads as follows: "All lots known as school lots, and all lots of lands, either within or without the corporate limits of the city

of San José, dedicated and belonging to said city, not heretofore disposed of by ordinance, or sold, and by deed transferred to individual purchasers, either by the Common Council, or by those acting as Commissioners of the funded debt of said city, (and which sales and transfers are hereby declared valid,) are hereby fully vested in the Mayor and Common Council of said city, in trust for the use and benefit of the public schools of the city of San José."

As the case of Branham and others, against the Mayor and Common Council of the city above mentioned stood, after the final decision thereof, the Land Company had no claim to the Pueblo lands; but since the re-incorporation of the city, they claim that, according to the strict legal construction of section seventy-three of that Act, they are entitled to all the lands not sold by the Common Council, or by the Commissioners of the funded debt, prior to the passage of that Act. They aver that the city is entitled to all lands not theretofore *disposed of by ordinance*, or sold by the Council or Commissioners aforesaid; and that, therefore, inasmuch as the contract made between the Land Company and the Mayor, June 12th, 1851, was subsequently ratified *by ordinance;* that the interest thus *disposed of by ordinance* to the Land Company, is excepted from the lands given the city, by the said Act of re-incorporation.

Upon the strength of this proposition, the Land Company conveyed their interest in the Pueblo lands to one Theodore Le Roy, for the purpose of making him a nominal plaintiff in a suit for the possession of the lands they now claim.

The Land Company, through their counsel, the Hon. John B. Felton, of San Francisco, and the Hon. A. J. Moultrie, of San José, instituted an action of ejectment in the United States Circuit Court, in the name of Theodore Le Roy, plaintiff, against a large number of persons, one hundred and thirty or more, for the lands which they possess. This suit is still pending. It is for outside lands, and is the only portion of the Pueblo lands of which the title is not settled, except some *suerte* claims, the area of which is small. There has been much complaint against the proceedings of the Land Company; but when we remember that this company paid for the building occupied by the first Legislature; that the city sold the same for thirty-eight thousand dollars, pocketed the money; and that the company have never been reimbursed to the amount of one dollar by the city, it is not strange that they seek to obtain some redress at law. The city, so far, only, was relieved by the technicalities of the law.

To those who think there is no equity in their claim, I would say, "put yourself in their place."

On the twenty-first of April, 1858, the Legislature passed an Act, to fund the unfunded debt

of the city, and provided for the establishment of a Board of Commissioners to carry out that object. The real estate of the city was conveyed to that Commission, that they might dispose of the same as it became necessary. The Board, having completed their duties under the Act, the same was repealed, and the Board abolished, by an Act passed January 17th, 1866. By virtue of the latter Act, the Board re-conveyed to the Mayor and Common Council of the city of San José, all right, title and interest in, and to, the Pueblo lands. Under this Act, the Mayor is now empowered to sell (subject to certain exceptions,) as directed by ordinance of the Common Council.

The United States Surveyor-General, for the State of California, has surveyed the exterior boundaries of the Pueblo. One or two objections were made to it by parties claiming to be affected thereby; but, thus far, the objections have caused no change in the survey, and probably will not. The survey so made, is given in the map of this work, which may be referred to at convenience. It will not be long before the United States Government will issue a patent for the Pueblo lands to the city of San José, in trust for the inhabitants.

CHAPTER XXIV.

BIOGRAPHICAL SKETCHES.

Hon. Peter H. Burnett.—Gen. H. M. Naglee.—Maj. S. J. Hensley.—Jacob D. Hoppe.—Charles White.—Joseph Aram.—Isaac Branham.—James F. Reed.—Thomas Fallon.—Adolph Pfister.—Peter Quivey.—Hon. James M. Jones.—Hon. C. P. Hester.—Hon. W. T. Wallace.—Hon. A. L. Rhodes.—Andrew J. Grayson.

I HAVE already finished the history of San José, proper, as a town in itself; and yet, the history of no town would meet public expectation did it not illustrate, in some degree, the characters of the men prominent in its early existence, and of those who may have subsequently thereto become so by eminent service and position. It is fit that good examples should be presented to public view, that they may shed lustre on the paths of the young, and aid them in surmounting every intervening obstacle on the march to the throne of honor and fame.

These biographical portraits, and the portrayal of certain interesting surroundings, will conclude the historical part of this work.

The Hon. PETER H. BURNETT was born on the fifteenth day of November, 1807, at Nashville, Tennessee. In 1817, he removed to the State of Missouri, but returned to Tennessee in 1826, where he remained five years. He there married,

and again took up his abode in Missouri. He practiced law for a long time in the latter State, and held the office of District-Attorney, for about two and a half years.

His wife's health became feeble, and it was apparent that the rigor of the Missouri climate was not conducive to her restoration. He sought for milder air. He was not long in determining where that was, from the information he had already obtained from the distant Pacific. The great question was, how to reach here. There were no roads; no path that could have been sought which did not lead through lands claimed by the red men of the forest. It was no undertaking that could have been carried out by a single family. It required the united strength of many; of people of no small share of hardihood and energy, to attempt a journey of such magnitude; one so long, so fatiguing, so hazardous. Judge Burnett lost no time, however, in endeavoring to induce other families to unite with him in the great enterprise of seeking a balmy climate, in a country where he believed nature had been prodigal in lavishing upon earth vegetable wealth. There were many families quite as anxious as the Judge to reach this coast, provided a way of safety could be pointed out. The Judge used great exertions in obtaining numerous families to join him in this new and hazardous enterprise. He was most successful. In 1843, a host, a gath-

ering of six hundred human beings, under the captaincy of Judge Burnett, with their household implements packed into one hundred and ten wagons, took up their line of march across pathless plains and rugged mountains, to make their homes in the then territory of Oregon.

No man who was not full of life, of resolute will, of unbounded energy, would have assumed the leadership of such a multitude of men, women, and children, on a march fraught with so much doubt, so many difficulties, subject to so much disappointment. This gathered host had all confidence in their leader, for it was by their consent, he held the position of commander. After quite a long journey, it was found that the company was too large to travel conveniently together. They, therefore, divided, but kept near each other. They constructed the road from Fort Hall to the Dalles, in Oregon. They were highly favored with health by a benign Providence, and they all, save four, reached their destined home; three were drowned, and one died of fever.

In 1848, President Polk appointed Mr. Burnett U. S. Supreme Judge of the Territory of Oregon. The commission was signed by the President on the fourteenth day of August. This appointment was declined.

In the fall of this year, Judge Burnett came to California, reaching the Yuba river November 5th. He went to Sutter's Fort, now Sacramento City,

on the twenty-first of December. He became agent for John A. Sutter, Jr., sometime in the following January. He was appointed by Governor Riley, in July 1849, one of the Judges of the Supreme Tribunal of the Territory of California; and elected by his two associate Judges, Chief Justice of that Court. At the first election held under the Constitution of this State, he was elected Governor by a large majority over his opponent.

His family arrived in San Francisco from Oregon, in May, 1849; but the severity of the summer winds there was too great for the feeble health of his daughter Letitia, (now Mrs. C. T. Ryland); and, in consequence thereof, he removed his family to San José, in the following month of September, where they remained until the winter of 1850, when they moved to Alviso, a distance of eight miles.

The Governor had accumulated considerable wealth, a large part of which was landed estate. His business kept pace with his wealth, and required most of his attention. In fact, so much was he compelled to watch his own private affairs, he saw an absolute necessity of resigning the gubernatorial chair, notwithstanding his official salary was ten thousand dollars per annum. He sent in to the Legislature his resignation on the eighth day of January, 1851, which was accepted by that body on the eleventh. After having more satis-

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factorily settled his own business affairs, he resumed the practice of law in San José, in 1851, with his two sons-in-law—the firm being Burnett, Wallace & Ryland. He continued the practice for a few years, with great success, and then retired. His family returned to San José to reside in 1854.

In January, 1857, Governor Johnson appointed him one of the Justices of the Supreme Court of this State, to fill the vacancy caused by the resignation of Judge Heydenfelt; which position he held until the beginning of October, 1858.

Judge Burnett came to California with a high reputation as a lawyer, and as a man of exceedingly great moral worth; a reputation which he preëminently sustained in this State. His official functions were performed in a manner most satisfactory to the bar and laity. His mild disposition and gentle manners are prepossessing. Although strong in his convictions, his respect for the opinions of those who are at variance with him, has won for him the esteem of mankind.

In 1860, Judge Burnett published a work in support of the Roman Catholic faith, assigning therein the reasons of his own conversion.

He never was an idle man, nor could he be one willingly. In 1863, he removed to San Francisco, and was active in establishing the Pacific Bank, of which he is President. His valuable services in the financial department of life have been profitable for himself and the bank.

Gen. Henry M. Naglee is a native of the State of Pennsylvania. He entered the United States Military Academy, on the first of July, 1830, as a as a cadet; and there remained until July 1st, 1835, when he graduated. He was ranked among the first in the graduating class of that year. He was promoted in the army on the day of his graduation to the rank of Brevet Second Lieut., Fifth Infantry. A leave of absence was immediately granted him for a short period, at the expiration of which he reported himself for duty, and was ordered on a recruiting service, in which he continued until the thirty-first of the following December. From that time until 1846, he turned his attention to civil engineering. When war was declared by the United States against Mexico, he considered that, as he had been educated in the school of the Government, he owed his services to his country; and particularly at a time when the regular army was insufficient to cope with the enemy on his own soil; and when the whole number of men, trained in the art of warfare, were needed to officer the new regiments about to be raised to battle for the nation's right in the coming conflict.

On the fifteenth of August, 1846, he was commissioned a Captain in the First New York Volunteers. This regiment sailed for the Pacific coast in the latter part of the following month.

He was in several skirmishes with the Indians; and was at the battle of Todas Santas, Lower California, March 30th, 1848.

On the twenty-sixth of October, of the latter year, his regiment was disbanded. From 1849 until 1861, he followed the banking business in San Francisco. On the breaking out of the civil war in our country, he felt as he did at the commencement of the Mexican conflict—that all men who had been educated at the military school of the nation, could do no less than offer that nation their services in the hour of danger. Had he been governed by personal comforts which wealth could bestow, he would have remained inactive, and nestled in the lap of luxury. His unbounded wealth would have made any office which the Government could bestow uninviting, in a pecuniary point of view. As a duty, he offered his services, and was appointed in the United States army, with the rank of Lieut.-Col. of the Sixteenth Infantry, May 14th, 1861.

On the tenth of the following January, and before he joined his regiment, he resigned; and was re-appointed in the Volunteer service, with the rank of Brig.-General, on the fourth of February, 1862.

He served in the defense of Washington, D. C., February and March; in the Virginia Peninsula Campaign, (army of the Potomac,) from March to August. He was engaged in the siege of York-

town from April 5th to May 4th; and at the battle of Williamsburg, May 5th. He served in reconnoissance and skirmishes from Bottom's Bridge to Fair Oaks, from May 20th to 28th: and at the battle of Fair Oaks, May 31st, 1862. He behaved most gallantly in this battle, where he held, unaided, the enemy in check for some hours. At this battle he was wounded.

To illustrate the noble actions of Gen. Naglee at this battle, perhaps I cannot do better than to recount the words of another gallant officer, W. W. H. Davis, Colonel of the 104th Pennsylvania Regiment, who in speaking of Naglee, says :

" Naglee was everywhere. He is a sort of thunder-bolt in battle. He was away on the extreme right of our lines, when the volley of the 104th announced that the battle had begun on the left. He came dashing toward us, through field and wood, to be with his brigade. In the warmest of the contest, he came dashing by the regiment, cap in hand, the men giving him three hearty cheers, and passed toward the left. He was now seen directing a battery, now rallying a regiment, and until the battle ended, he was in the midst of it, wherever he could be of service. He retained, in a large degree, the confidence of the men who served under him."

Gen. Naglee was also present at the operations before Richmond, from June 26th to July 2d. He obtained a leave of absence from the following

July 5th, until Sept. 28th. He then returned to the defense of Yorktown, Va., where he remained until October. In January, 1863, he was in command of a division in the Department of North Carolina, and in February and March in that of the South, at St, Helena Island, S. C.

From March till the latter part of June, he was in command of Beaufort District, N. C., during which time he was engaged in the relief of Washington, N. C., April 15th. He was also in command of Harper's Ferry, Va., July, 1863; of the Seventh Army Corps, from July 25th to August 12th; and of the District of Virginia, from the latter date to September 23d.

From November 6th, 1863, until April 4th, 1864, he was in waiting orders at Cincinnati, for duty in the Department of Tennessee.

On the latter day he left the service. It was the opinion of many, that the political status of every officer in the army, however qualified and gallant, was taken into consideration at Washington, whenever promotions were made the order of business. It has been currently reported that political opinion denied to Gen. Naglee the rank his gallant services and qualifications demanded.

Since the close of this ravaging conflict, he has remained on his lordly estate in this city, paying his attention to horticulture; more particularly to the culture of the grape, and the manufacture of choice wines and brandies. This business is

watched and studied by him, more as a matter of pleasure and of information, as to the adaptability of the soil and climate here to the productions of those beverages, than as profit.

Major Samuel J. Hensley was born at Lexington, Kentucky. Early in his childhood, his parents removed to Platt county, Missouri. He crossed the plains in the year 1843, and soon after his arrival in California, entered the service of Captain John A. Sutter, at New Helvetia (now Sacramento). He was among the most active men here in 1846, in doing duty for our country, at a time when the numerical strength of American forces was such that it required every man to unflinchingly do his duty. He joined the California Battalion under Fremont, and was at first a Captain, and performed duty on detached service in the southern part of the then Territory. He was afterward commissioned a Major.

Soon after the difficulty between Gen. Kearny and Commodore Stockton, as to the Governorship of California, he resigned his commission as Major of the California Battalion, and accompanied the latter back across the plains, to the Eastern States. He returned to this coast in 1848, formed a copartnership with B. B. Redding and others, under the style of Redding, Hensley & Co., in the general merchandise business, at Sutter's Fort. The firm was exceedingly successful. They continued business until about the year 1850. Within a

few months subsequent thereto, Major Hensley became a partner with Blair, Whitney and others, for the purpose of carrying on the business of navigation on the Sacramento river. They constructed the steamboat *Kate Kearny* first, and soon thereafter, the *Helen Hensley;* the latter named in honor of Mrs. Hensley. This copartnership existed until 1854, when the California Steam Navigation Company was formed, into which the property of the former company became merged.

Major Hensley was the second President of this company, the success of which was much the result of his foresight, activity and judgment. Success seemed to follow him in financial matters, and he became rapidly wealthy. His strict attention to business wore fast on his feeble constitution. He occasionally engaged in field sports, but not sufficiently to preserve his health. His remarkably accurate judgment seemed to be at all times in demand, in behalf of the interest of the company; and he was scarcely permitted to leave the limits of San Francisco during his presidency, without being summoned to exercise that judgment in some matter deemed important.

For some years it appeared that his business absolutely required all his attention in the great emporium of the State, so that little time was left him to be with his family. A year or two prior to his death, he had arranged his affairs in such a manner as to relieve him of much of his former

duties, and to permit him to enjoy the greater share of his time at his pleasant home, with his affectionate wife and children.

His unceasing toil in the construction of his colossal fortune, correspondingly pulled down the fabric of his health. His cessation from labor was too late. Partaking of so much spirit—so much energy—he seemingly forgot his individual self. And that forgetfulness of self-preservation at last proved fatal. As the year of 1865 advanced, the sun of his life descended. On Sunday morning, the seventh of January, 1866, the great Destroyer gathered up his victim. He died at the age of forty-nine. He possessed a simplicity of character and of manner, yet a natural dignity which won respect. His perception was excellent, and he showed a knowledge of fitness and propriety, which is the real essence of refinement. Generosity might have been considered his weakness; few men derived more pleasure than he from kindness to others. Nobody came to him in distress that did not obtain relief, if money was the object of their request. He was ever ready to come forward and assist in matters of public enterprise, and usually took such a part as showed that his opinion, as well as his means, was an important aid.

His death created a vacancy not easy to be supplied, and cast a sombre pall over a wide community, which deeply mourned his loss. As evidence

of the high estimation in which he was held in this city of his home, I may cite the fact that the City Council held a special meeting on the tenth of January, and passed a series of resolutions expressive of his distinguished character, and of the deep gloom which his death had occasioned. Among those resolutions, was one requesting the Hon. Judge of the District Court, for the county, to cause to be spread upon the record of that tribunal the resolutions thus adopted. His Honor cheerfully consented, and after making some touching remarks as to the character of the deceased, ordered the Clerk to record the resolutions; and in further respect to the memory of the departed, adjourned the Court until the following day. Such a mark of respect was, indeed, illustrative of the high standard which the character of the deceased had obtained; for probably it was without precedent that one, not a member of the legal profession, should thus be placed upon judicial record. As we look back upon his life and career, we see it bristling all over with charity and noble deeds. How much we, who knew him, well see therein to admire and respect; and how willingly we bear him in our hearts, and lisp his name with a manly praise.

At his departure, he left a most accomplished and affectionate wife, a loving son and daughter, who, while they bow to the decree of Providence,

deeply mourn his premature loss, and cherish his fame.

Jacob D. Hoppe was born in the State of Maryland, about the year 1813. He went to Paducah, Kentucky, not long after he became of the age of majority, where he remained about two years, and was married. He then removed to Lexington, Missouri, where he resided till 1846, when he came to California. He was a painter by trade. Within a few months after his arrival here, he commenced business in San Francisco. He held some position of public trust, and was interested in the establishment of a weekly newspaper in that place. This was in the year 1847. At the commencement of the publication of the "Alta California," the proprietors thereof procured the printing materials which Mr. Hoppe had. Soon thereafter he came to San José, to remain permanently. After the discovery of gold, he went to the mines, where he remained a few months with some profit, and returned to San José, where he continued to reside until his untimely and unfortunate death. He was elected a delegate to the convention which formed the State constitution, where he performed well his part, and worked manfully in the interest of San José.

A more enterprising and public-spirited man never lived on this coast. It was admitted by the community at large that his death was a public calamity. He was, indeed, a general favorite; at

all times affable in his manner, polite to all, and generous in the extreme. No man tried harder to build up San José than he. No man, according to his means, subscribed more generously than he for public improvements.

He carried on an extensive mercantile trade, and also speculated in lands. Success attended him for a period, and he became wealthy. That fortune did not fail to array itself in wings, nor to try the exercise of its new powers of flight. He was left without its alluring charms; though not by mismanagement of his own business operations, but by an unlimited generosity, by a continual desire to favor some one in need. He became surety for various large amounts, which he was compelled to pay. On one occasion he was forced to pay eighteen thousand dollars for what he had never received one dollar's benefit, and at a time, too, when he needed every dollar he possessed to meet his own engagements, as his business was extensive. The high rates of interest soon ate up, in those days, a man's capital, if allowed to run many months. The interest of months counted as rapidly as that of years in the Eastern States. He built a large adobe building on the northeast corner of Market and Santa Clara streets, which cost twenty thousand dollars. During the erection of that structure he was called upon to pay heavy securities, while at the same time he had purchased a hundred thousand dollars worth of

goods in the Eastern market. The pressure was too great, and he suspended payment not long thereafter.

He was one of the unfortunate passengers who sailed on the steamboat *Jenny Lind*, from Alviso for San Francisco, on the eleventh day of April, 1853, when the boiler exploded killing many, fatally scalding others, and some only slightly. He lingered with great pain until the seventeenth of that month, when he expired at five o'clock P. M., at the house of the Rev. B. Brierly, in San Francisco.

The funeral services over his remains took place on Tuesday, the nineteenth, at two o'clock P. M., under the auspices of the Masonic Society, at the Rev. Mr. Winn's (South Methodist) Church, in this city. The weather was quite inclement and the roads were muddy, which prevented many ladies from attending; yet the house was full.

There sat Protestant, Catholic, Catholic priests and Jews; there, too, sat the children of the Common School, to take the last lingering view and to hear the last sad rites performed over the last of all that was once mortal of one, who had done so much for the community at large; one who had been most instrumental in establishing the first Common School in this city; the first in all moral and proper advancement of San José. Death summoned him in the prime of life, in the vigor of usefulness, and from a people who could ill spare him; from a people who long wore the face

of sorrow and bereavement at his untimely departure.

Charles White came in the year 1846 to California, from the State of Missouri. From the time of his arrival till his death he made San José his place of residence. He was a man of remarkable sagacity and business tact, of great energy and a great deal of public spirit, and was one of the leading and most active men of this town. He held the office of Alcalde in the year 1848. He was one of the prime movers in the active part taken by the citizens here, in 1849, to secure the location of the Capital at this place.

He had witnessed men in the Western States possessed of immense fortunes derived from transactions in real estate. The observations did not pass unheeded. He was emphatically impressed with the future greatness of this part of our country. He dealt largely in landed interests, which by enhancement in value, secured a large fortune for his family. He was also one of the unfortunate victims who fell a prey to the devouring element, hot steam, which came forth in all its fury from the bursting boiler on the steamer *Jenny Lind*, on the eleventh of April, 1853. He expired on the following day, leaving an interesting family of wife, son and daughter, to lament the loss of an ever watchful, loving husband and parent.

Captain Joseph Aram was born in Whitestown, Oneida County, New York, on the twenty-fourth

day of March, 1810. In 1835 he took up his residence in the State of Ohio, and in 1840 removed to Illinois, where he remained until the spring of 1846, when he started for California, where he arrived in the fall of that year. Soon thereafter he met Colonel Fremont, who seemed to have implicit confidence in Aram, whom he commissioned a Captain in the California Battalion on the twenty-first of November. All the Americans were needed in those days, when the conflict was going on between the United States and Mexico. Several families arrived in company with Aram. Under the advice of Fremont, Aram proceeded with his family, and others, to the Mission of Santa Clara, where there were more vacant houses than at San José. Captain Aram made' the Mission his headquarters. He had raised a company of some thirty men, or more. He marched his men out of their quarters on the second of the following January, to assist the American force then engaging the enemy a little northwest of Santa Clara. As the conflict commenced several miles distant, it was nearly brought to a close before Aram's force reached the ground of action.

He was elected in 1849, a delegate to represent the district of San José, in the Convention, held that year at Monterey, to form the State Constitution. He was also honored by being again elected by the people here, to represent them in the first Legislature. He has always borne a high character

for honesty and industry, and commands the respect of the whole community.

Isaac Branham was born in Scott county, Kentucky, in the year 1803. At the age of twenty-one, he removed to Calway county, Missouri. He there resided until the early part of 1846, when he sought a home on the Pacific coast. The ill-health of his family was one of the main springs that prompted his removal to this country. He has been engaged, the principal part of his life, in agricultural pursuits. He made this valley his residence immediately after his arrival to this coast. He was a member of the committee of 1846, who had unlimited power to act for the best good of the Pueblo. He was afterward a member of the Ayuntamiento (Town Council.) He was among the prominent men who figured most conspicuously in securing this town as the location of the Capital of the State; and to aid it, he loaned his credit.

His residence for quite a period was in a two-story house situated on the southwest corner of Market Square; but many years ago, he removed to his farm on the Navaez ranch, where he has ever since made his home.

Mr. Branham has always been recognized as one of the sterling honest men of the country. No man ever doubted his word. His manner has always been attractive, from his open, frank familiar, and unpresuming address. He is social

in a high degree, and welcomes visitors to his house in such an honest, heart-spoken, manner that it makes one feel that the pleasure of meeting is mutual.

He possesses one of the characteristics of the House of Bourbon—a great love for the chase. He, whose heart has been mellowed by the music of the yelping pack, may renew that pleasure by a hunt with "Uncle Isaac," as he is familiarly known. He often declares that he is unable to count all his nephews.

By his good management, his economy, and uprightness, he has secured for himself and family a fortune, and an unsullied name.

James F. Reed was born in Ireland on the fourteenth day of November, 1800, and came to the United States with his widowed mother when a very small child. After he arrived at a sufficient age to be of some service to himself, his mother sent him to the State of Virginia, to live with a relative of hers, when he was placed as a clerk in the store of that relative, and there remained until about the age of twenty-five. He then removed to the lead mine district of Illinois, where he engaged in the business of mining until the year 1831, when he changed his abode to Springfield, in the same State. He served in the Black Hawk war, and, after its termination, returned to Springfield. Abraham Lincoln, late President of the United States, and Mr. Reed, were privates in the same

company in that war. That company was commanded by Jacob M. Early, uncle of Gen. Early; who served under Gen. Lee, in the late rebellion. The coincidences, at this time are noteworthy. He then engaged in the mercantile business, made money, and purchased a farm. He married there in the year 1834, to an accomplished daughter of Humphrey Keyes. She was born in Union, Monroe county, Virginia. He subsequently engaged in the railroad business, receiving about the second contract given out in that State, and subsequently numerous others, which would have yielded him large profits, and made him a wealthy man, had not the State repudiated the payment of railroad contracts; that is, she passed laws, compelling contractors to compromise on her own terms, whereby Mr. Reed became a loser of many thousand dollars.

In April, 1846, he, with his family and others, started for California, arriving, some of them, in the fall of that year. Others of them, as is well known, were carried to a frozen grave, for the want of food. Those who have read the terrible fate of the Donner party, the one with which Mr. Reed came, can picture in their minds its horrors. To record it here is not the province of this work. Mr. Reed arrived in California with but scanty means; what little he had to spare was invested in land. He was engaged in the service of his country in 1846–7, and commanded a company

on the right of the artillery, in the battle at Santa Clara, January 2d, 1847. His name is erroneously given there as "Jno." instead of James F. After the discovery of gold, he was among the numerous ones who tried their fortunes at gold hunting, at which he was successful. He returned to San José with considerable means, part of which he invested in land. He was one of the most active, if not *the* most active man of this place, in making San José the Capital of the State. He circulated documents throughout the State, and endeavored to impress upon the minds of the members elect to the State convention the importance and value of this place as the seat of government. From first to last, he spent of his own means not much less than twenty thousand dollars in behalf of San José, hoping to make it the Capital. He was a most generous man, possessing much public spirit; social and entertaining at his own house. He is strong in his convictions, warm in his friendships, bitter in his hate; but honorable in apologising if satisfied that he has been in the wrong. In 1850, he had large offers made him for his real estate; but, believing in the growth of this city, refused to part with it. He afterward became involved, but prior thereto had secured to his family an estate which, by its enhancement, has provided them bountifully with the comforts of life. He has been permitted to live nearly three quarters of a century, in fair health, and to see the city, for which he did so

much. rising in wealth and prosperity, and assuming that rank and position which he long ago prophesied. May he long live to witness its advancing growth.

Thomas Fallon, now aged forty-six, was reared to the mercantile business in London, Upper Canada. He was most attentive to business, and to the welfare of Mr. Jennings, his employer. He became thereby the head clerk of the establishment, where half a dozen others were employed. He was somewhat adventurous in his character, and loved the excitement of the forest. Before the age of majority, he made up his mind to take his chances in the Far West; and, if not successful in a pecuniary point of view, he would at least spend a part of his life in a romantic, and to him, a most pleasing way. In 1843, he resolved to push on to the Pacific coast. Meeting a few pleasant companions, who were of a like disposition, they all agreed to join each other in the march of the novel enterprise. In their journey, they met the exploring party under Fremont, who were winding their way to the same country that Fallon's party were destined to reach. In the party of Fremont were Kit Carson and Alex. Godey. The two parties traveled thereafter together, for the sake of security. Fallon and his party in no way obligated themselves to be under Fremont, but as an independent company proceeded together. They reached California in the

spring of 1844. In 1846, Fallon rendered valuable service to the United States forces, in the war against Mexico. He was the first man of our forces who took San José, and the first to raise the flag of our country in this town, as has been observed in a former chapter. He afterward gave his services to the country under Fremont, in the lower part of the State, during the same conflict.

By his strict attention to business, and prudent investment in real estate, he has made himself one of the wealthy men of the State. He once filled the office of Mayor of this city, discharging the duties thereof most faithfully, and has placed himself, by his straightforwardness, in the ranks of the honorable men of this country.

He removed to Texas in 1852, but returned to this city in 1854, where he has made it his home; having been absent many months since that period traveling in Europe.

Adolph Pfister, the present Mayor of San José, was born in the city of Strasburg, in the year 1821. He sprang from an ancient family of that ancient city. At the age of twenty-four, he left the shores of Europe to carve out his fortune in a land which presented more abundant materials for the development of his talents, unaided by pecuniary assistance.

He arrived in the United States just before the agitation caused by the belligerent attitude of

Mexico toward our government, upon the banks of the Rio Grande. When the affair assumed a war-like shape in earnest, he saw an opportunity of joining the volunteer forces of his adopted country, which would place him in a land of vast native wealth, according to the reports which had been circulated throughout the Eastern States. He, therefore, volunteered to come to California, in the New York regiment under Col. Stevenson, in the fall of 1846. It was well understood in New York that this regiment was coming to California with a view of settling here, if the country was at all in accordance with the character theretofore given of it.

Mr. Pfister has always borne the character of an industrious man, and of being honorable in his dealings. For many years he has been engaged in the mercantile business in this city, and his application thereto has resulted in the accumulation of a large fortune. He is noted for his good nature, his politeness of address, and strict notions of honor. He speaks several languages, an accomplishment which has been of infinite service to him in this country, where there is such a diversity of speech daily uttered. He was long a member of the City Council, where he rendered valuable aid by his financial ability, in relieving the city of her indebtedness. He was elected Mayor of the city by a flattering vote; and thus far has performed the functions of that office in a

manner eminently satisfactory to the whole community.

Peter Quivey in 1825 left the State of New York, where he was born, and went to the State of Kentucky. He married in 1832 in the latter State, and about four years thereafter he removed to Indiana. In 1839 he again changed the place of his abode and resided in Missouri, until 1846, when he started with his family, and many others, to make a home on the coast of the Pacific. He reached this country the latter part of that year. He soon found his way into this valley, where he resided until his death. He had not the benefit of an education, but he possessed a strong mind, and in the general transactions of life he exhibited a good deal of sound judgment. He was endowed with a kind heart and generous nature. He was at all times inclined to assist the needy, and often loaned his name where losses were the consequence. Mr. Quivey was an industrious man. He followed the business of stock-raising and farming, and became at one period possessed of very considerable means. The decline in the value of stock, consequent upon an overplus in the country, weakened him financially, almost to bankruptcy. He rallied, however, again from that position and secured quite a competency. He was strong in his likes and dislikes, but honest in the opinions he advocated. He had many warm friends and bore, in general, the character of an excellent citi-

zen. He departed this life at his home on the twenty-eighth day of January, 1869, at the age of sixty-one, leaving an affectionate family to deplore his loss.

James M. Jones was born in the State of Kentucky, about the year 1821. He lost his father when quite young; and his mother, a few years after the death of her husband, married Dr. Joseph L. Hornsby, of the same State. Soon thereafter, the family moved to Plaqueman, in Iberville parish, Louisiana, where Dr. Hornsby practised his profession with eminent success. James, at the early age of about seventeen, entered the law-office of Mr. Edwards, of Plaqueman, as a student of law. His health being delicate, it was thought that a change of climate would be the most salutary restorative, and he was accordingly sent to Europe, where he remained traveling about a year. He was a young man of great energy and considerable pride—a proper pride which stimulated him to the exercise of all his mental faculties, to their very utmost. He studied French, Spanish, and Italian; read and spoke them with considerable facility. After his return from Europe, he again applied himself with renewed vigor to the study of the legal profession; and subsequently commenced the practice thereof, in Louisiana. After the discovery of gold in California, he was not long in determining the course he would pursue. He looked upon this country as a well-sown field,

where the harvest was waving for his approach. He might well have considered himself a well-armed reaper—armed with a knowledge of the science and practice of the civil law, and with a knowledge of the Spanish language. He came into the fields here, and the harvest fell at his bidding. He first located in San Joaquin district, whence he was sent as a delegate to the convention held in 1849, at Monterey, to form the State Constitution. In that body, young as he was, he appeared among the foremost in debate.

He exercised an unerring judgment when he determined that the agricultural and stock portion of this country would be fruitful in litigation.

His familiarity with the civil law and the Spanish language were enough to insure him an abundant success. He finally located in San José, in 1849, and formed a law co-partnership with the Hon. John B. Weller; the latter keeping office in San Francisco. Mr. Jones' practice here was quite lucrative. He was considered one of the leading lawyers of the State, particularly well versed in the land law. His name was spoken of in connection with the United States Senate, before his age was sufficient to make him eligible. He was a member of the Whig party, which would, perhaps, have been sufficient to defeat him in 1850, when the Democrats were in excess in the legislative body.

He was highly honored by the appointment of U. S. District Judge for the Southern District of the State of California. The appointment gave universal satisfaction. But he was not permitted to distinguish himself under the judicial ermine. He was intending to depart from this city about the fourth of December, for his legal residence, Los Angeles. But, in the very blossom of his life, his soul departed like a sunbeam, long before the harvest of glory was gathered. Consumption carried him to the silent tomb; mortality put on immortality. May we not hope in vain that he was conveyed to the bowers of bliss. He died about the fifteenth day of December, 1851, at the residence of Mr. Charles White; then near the depot, west of Market street.

The Hon. Craven P. Hester was born on the seventeenth day of May, 1796.

The life of his father, Matthias Hester, is not unattractive from his miraculous escape from death by the tomahawk. He, with his father's family, emigrated from Hanover, Europe, landing at Philadelphia in 1776. Matthias was then seven years of age. Having reached the age of twenty, he removed to Louisville, Kentucky.

In 1790, he attempted, with others, to remove a family from that town to Shelbyville, in the same State. Having reached a certain point, where Middleton is now located, not far from a fort, the party were attacked by Indians. Matthias having

charge of the team was in the advance, and riding one of the horses in the team. Two Indians were in ambush, one of whom fired at him; the ball striking his head glanced, probably from the fact that he was then in the act of turning his team. From the effect of the ball he fell from his horse, but rose up and ran, followed by the Indians. After a race of about one hundred yards to a dry creek; perceiving that he was about to be overtaken, he fell into the bed of the creek, face downward. One of the Indians sprang upon him with his tomahawk drawn, and, aiming at his head, gave a blow. The Indian's foot having slipped, while in the act, caused the tomahawk to glance up, taking off a piece of the skull, leaving the brain untouched. The Indian then scalped Hester, taking about double the usual amount of flesh. Hester remarked after that, that he thought his head was off. Painful as it was, Hester laid perfectly quiet. The Indian, believing him to be dead, and knowing that they were in gun-hearing of the fort, hurried away for the plunder. In the meantime, one of the other men had been shot, from which he afterward died; and the family, being on horseback, successfully escaped. After Hester had lain some moments, he raised up on his feet and saw an Indian mounted, facing toward him. He fell immediately on his face, but unobserved, where he remained almost breathless. The Indian rode to the bank of the stream, gave a look at what he

supposed to be a lifeless corpse, then returned to the wagon.

Hester continued in his apparent dead attitude, until the moving wagon could no longer be heard, when he again rose up, and found that he was alone. In the difficulty, he received a wound in the back, which he supposed to be caused by the thrust of a spear, while he was running. The instrument pierced the lungs, producing a very severe injury. Hester attempted to walk to the fort, but found he was too weak, and laid down, where he was discovered by some of the party at the fort, who had heard the firing of the guns, and had come to ascertain the result.

Hester was soon carried to Dr. Knight's, in Shelby County, Kentucky, under whose care he was restored to health. Dr. Knight was an eminent surgeon, belonging to the army, and was at Braddock's defeat.

Matthias married in 1793, and in seven years thereafter removed to the then Territory of Indiana, where Charleston is now situated. He became the father of eleven children, ten of whom he raised.

Craven P., the prominent subject of this sketch, was the second son. He studied law at Charleston under Judge Scott, one of the Judges of the Supreme Court of Indiana, and, after being admitted to the Bar, commenced practice in the same town; and there he married.

In 1821 he removed to Bloomington, in the same State, where he continued in the practice of his profession until 1849, when he emigrated across the Plains with his family to California. They proceeded on their way to St. Joseph, Missouri, where they rested and made final preparations for their long journey. They started from there on May 11th. In those days such a trip was indeed long and fatiguing, more particularly so to persons at the advanced age of Mr. and Mrs. Hester. The health of the latter was feeble and in such a condition that many friends scarcely expected to hear of her safe arrival in California. Mrs. Hester was highly benefited, physically, by the trip. In fact, she walked nearly half of the distance. They reached the mouth of Feather River, in good health, on the sixth of the following October, where they remained in an inundated country until the month of May next thereafter, when they took up their abode in San José, where they have since resided.

Mr. Hester brought to this country a fine reputation as a lawyer, and, as a man of high moral character. He was elected District Attorney of the Third Judicial District on the seventh of October, 1850, receiving his commission one month thereafter. On the sixth of May, 1851, he resigned that office, and was forthwith appointed, by the Governor, Judge of the District, to fill the vacancy occasioned by the resignation of Judge Watson. On the third of the following September he was

elected to the same office, until the next general election, in 1852; when he was reëlected for the full term of six years, during which term he served, giving eminent satisfaction.

On August 25th, 1869, Judge Hester and his wife celebrated the fiftieth anniversary of their marriage by a Golden Wedding, at which assembled a host of warm friends, to congratulate the venerable pair that had been so blessed with life and health. The many smiling faces were evidence of the happiness of that union.

In the month of June, 1870, Judge Hester and lady visited their old home in Bloomington, Indiana, where is situated the University of the State. Long before the arrival of the aged couple, the people had heard with surprise, mingled with delight, of the contemplated visit. On their arrival they witnessed a sincere and glowing devotion from old and tried friends. It almost seemed to that town as though the dead had arisen. Twenty years before, when the advanced pair departed therefrom, they left doubts and misgivings in the minds of many friends, whether they would ever reach in safety California. And now, at the age of near four score years, they appear on the old grounds, firmly walking, in good health. Judge Hester was agreeably surprised in ascertaining that he had been so kindly remembered at his old home, and so highly honored by the University there, in having the degree of Doctor of Laws conferred

upon him, unsought and unexpected. After a visit of a few months he and his wife returned to their California home, where they now are, in good health. Long may they live in peace and happiness.

The Hon. WILLIAM T. WALLACE was born in Lexington, Kentucky, on the twenty-second day of March, 1828. He there studied the profession of law, and had entered the practice a short time prior to his coming to California, which was in the fall of 1850. He immediately settled in San José, and commenced the practice of law, meeting with remarkable success at the very outset. He held for a short period, in 1851, the office of District Attorney for the Third Judicial District of the State. During that year he formed a copartnership with Messrs. Burnett and Ryland, under the style of Burnett, Wallace & Ryland. This firm continued the practice with great profit for a few years, when Governor Burnett withdrew, leaving the firm Wallace & Ryland. He was married on the thirtieth of March, to Miss Rometta Burnett, an accomplished daughter of the Ex-Governor. In 1854, Mr. Wallace was elected to the office of Attorney-General of the State, which he held for the term of four years, conducting the affairs thereof with great ability. He continued his residence and practice here, visiting Sacramento and remaining there only so long as official duty required. About the year 1859, he and Mr. Ryland

dissolved copartnership, each thereafter practicing alone.

In 1863, Mr. Wallace removed to San Francisco, uniting himself with Patterson & Stow, under the name of Patterson, Wallace & Stow. This firm continued four years in the practice of the law, receiving about the largest and most lucrative patronage of any law firm in the State.

He was a candidate for the United States Senate, in 1868, and commanded a large vote, but insufficient for election. He received the nomination as one of the Presidential electors on the Democratic ticket in 1868. He also received the nomination at the hands of the same party as a candidate for the Supreme Bench, and, at the election in the fall of 1869, received a majority of the votes for that office.

During the last Presidential campaign, he did eminent service to the Democratic party in canvassing the State. He had paid so little attention to politics, and so much to law, consequent upon a constant pressure of professional engagements, that his friends harbored some doubts as to his success on the stump. He had scarcely become awakened to his duties in his new field of enterprise, when it was apparent that he had gathered from the political storehouse a sufficient stock to cope with his antagonist, and put to flight all anxiety that hovered around the minds of his friends. He demonstrated that he had sounded

the depth of political science, and was not unmindful of the ability arrayed against him. He spoke with greater facility, clearness, and vigor than his most ardent admirers anticipated.

Judge Wallace's mind would probably be considered more solid than brilliant; active and acute rather than imaginative; and he, a close thinker. His arguments were generally comprehensive, forcible, and terse. His position is in the front rank of the profession. His change from the bar to the bench, has not lessened the standard formerly awarded to him by his professional brethren.

The Hon. A. L. Rhodes, present Chief Justice of this State, was born on the twenty-fifth day of May, 1821, at Bridgewater, Oneida county, New York. In 1841, he graduated at Hamilton College, Clinton, New York. After studying the profession of law, in 1845 he went to Bloomfield, Green county, Indiana, where he practised; and where he was married, on the first of September, 1846.

In the fall of 1854, he came to California with his family, and settled in this valley. He did not resume the practice of the law until 1856, when he opened an office in this city, and immediately took position as a leading member of the bar. He held the office of County-Attorney for a short period: and in 1859, he was honored with a seat in the State Senate. He was accorded there, by general consent, a prominent position, exercised much influence, and commanded the respect of the

whole Senate. He was known there as an industrious man, of talent and honor. Although not possessing the highest power of oratory, he received from the Senate an undivided attention whenever he spoke. He was assigned the position of chairman of the judiciary committee, and gave universal satisfaction to the members. He introduced some important amendments to the Constitution, which were adopted.

In 1863 he was elected on the Republican ticket one of the Judges of the Supreme bench of the State. In drawing lots among the several Judges for the respective terms of their offices, that of eight years fell to Judge Rhodes. He has sustained himself honorably as a member of that Court, and has exhibited by his written opinions that he possesses the qualifications of condensation, of perspicuity, and that of an acute and exact reasoner. His diction is characterized by brevity and significance of expression. The mildness of his manner to his professional brethren, both on and off the bench, has won their highest respect.

Andrew J. Grayson. As the hand of Providence opens to donate genius and talent, it does not seek groups of nobility nor of wealth to specially favor, but with a republican spirit it scatters its bounty through every class of society. Sometimes we wish that wealth had fallen where we perceive the highest order of genius implanted, that it might assist in its expansion and culture.

And yet, we have frequently observed talent stunted in its growth because planted in the garden of wealth. Genius has no greater enemy than indolence. Sometimes genius and indomitable will are baffled by uncontrollable circumstances, that seem to deter the strongest heart from a renewal of energy. But the genius of other persons, in the midst of trouble, acquire new elasticity by pressure, like the power of steam. Andrew J. Grayson belonged to the latter class. How much it is to be regretted that wealth did not serve his genius, so that its illumination might have shed greater lustre on science and art! How much labor, how much fatigue, how much danger did he not undergo, to present to the intelligent and the curious faithful pictures of the cunning work of Deity? How he watched with a patient eye, studied with deep thought; how he portrayed with an unerring hand the features of the feathered race, which chant the morning hymn and sing sweet carols to parting day.

The number is not small who think that time is ill spent, if not occupied in gaining something of real utility, which may be immediately traced as effect from a cause. And yet, no man can cast a glance over a town or city, without observing many processes of manufactory, of which he might exclaim that they were of no ultimate benefit to mankind. That which gratifies a noble desire and innocent pleasure, which has a tendency to inspire

us with a love of God, by exhibiting new beauties of His work, or of the genius of man, is not work in vain. We can do without the church organ, but who does not feel his soul swelling with inspiration as he listens to its measured tones of harmony, mingling with vocal accents in the chant of glory to God?

The works of art are numberless which do not absolutely administer to the actual necessities of life, but which elevate many virtues, chasten and refine the varied intercourse of life, and extend the area of innocent enjoyments.

He, whose main thought is the gain of filthy lucre and the gratification of his passions, is little above the fowls of the air or beasts of the field. The works of Mr. Grayson are not those which point to any actual necessity of life, but they are those which refine our feelings, and may be well termed public blessings.

Let us review his steps from the swamps of Louisiana, for there he first saw light, August 20th, 1819. The waters of the Ouachita often mirrored his youthful visage—for there he angled with the rod, and there he crept stealthily through the canebrakes, gun in hand, to send death after some fowl of the air, or some animal of the thickets. He preferred the latter for game, as the love he bore the former often stayed the hand of the destroyer. He had some love for drawing, and particularly in portraying the works of nature;

but the skill was baffled by his teacher rather than aided and encouraged.

After he returned from the college of St. Mary, Mo., and after the death of his father, and the division of his estate, young Grayson pursued the mercantile business, unsuccessfully. For its drudgery he had no love. He married about this time, which was in 1843. For a period he was undecided what to do; but learning in St. Louis, from trappers, much about the Pacific coast, he and his wife concluded to turn their faces in this direction, and to proceed until the ocean became their barrier. Having obtained company sufficient to attempt the enterprise with safety, they set out in the spring of 1846, and arrived in California in the month of the following October.

As every American was needed in defense of his country's honor, Grayson offered his services forthwith; and, leaving his wife at Sonoma, proceeded wherever he was ordered. He was commissioned by Commodore Stockton, to serve during the war; and raising a company of mounted riflemen, he joined the other forces, and remained doing duty until peace was restored.

After meeting with some elevations and descensions, financially, he and his wife resolved, in the latter part of 1853, to make San José their home. I cannot better express the views he then entertained, than by quoting his own words, recorded in his journal. He there says: "Having tried the

north side of the bay, I felt certain the south side would make us happy. In fact, we had the country, or green, fever. We pictured all sorts of pleasure we would have in eating grapes, figs, apples, etc., under our own vine and fig tree. We were building castles, or cottages, with everything in keeping, before we had made a purchase.

"We looked at many places, and our old friends and traveling companions allured us on, picturing the many pleasant times we would have in being near, and enjoying each others company, as we once had, in our long perilous journey across the plains in 1846. Having found a place that suited me, I purchased it, commenced building and planting. My place was soon in a most flourishing condition; roses, strawberries, trees, etc., had grown up most astonishingly, under my careful and attentive culture. A beautiful spot nestling among the trees and roses, was our delightful little cottage, with its artesian well—a perpetual flowing fountain of crystal water. Tame birds ran about the yard, which had been domesticated with much care and skill. Wild ones sang in the grove about the house. It was a spot one delighted to visit. Having much spare time on my hands, I commenced drawing and portraying some of the objects of natural history that interested me most; little dreaming of their ever being brought before the public; but time and circumstances make

strange alterations in the path of life we expect to pursue.

"In 1855, my wife and a lady friend from San Francisco (unknown to me,) sent some of my paintings to the State Fair, in Sacramento. I there received a special premium, which not only surprised me, but encouraged me on. I then commenced with renewed vigor, and at the Fair in San José, 1856, I obtained the first premium in apples and water colors."

Here, then, in San José, at his "Bird's Nest Cottage," as he and his wife termed their home, on the northeast corner of Fourth and St. Julian streets, Mr. Grayson first began in earnest to teach himself the science of ornithology, and the art of drawing. Here, in this charming valley, in a luxuriant garden, which was daily visited by the merry songsters, to carol enchantingly to the admiring landlord, as if conscious of his admiration and their own powers of enchantment; here, I say, the bud of genius expanded day by day, until, moving to a more tropical clime, it became a full-blown flower, brighter than all the beauties of the deep-dyed sailers of the sky, which he, so life-like, threw upon canvas.

He had, at the solicitation of his wife, before he settled here, visited the Mercantile Library in San Francisco, and studied with delight the works of Audubon. They gave him new ideas, and increased his desire to imitate them. After plant-

ing himself in his little Bird's Nest Cottage, in a balmy clime, and listening to the warble of his feathered visitors, he was more than ever enchanted with the idea of pursuing his new theme. And for the reason that here he made his first attempt to build up his fame, I give place herein to this sketch. To his wife this Bird's Nest Cottage will be ever dear in memory. It is mirrored in her heart as it appeared when she and her husband nestled in it as their own sweet home.

Not only did Mr. Grayson learn to be a great imitator, but a preserver of Nature. He became by self-instruction learned in the art of taxidermy. Many of his specimens found their way to the Smithsonian Institute, for which, he received high praise and many thanks.

He and his wife departed for Tehuantepec, in 1857, with a view on his part of continuing the study and practice in the science and art which were the choice of his heart. A shipwreck deprived them of all, save the apparel which they had on. Just at that period the want of a surveyor on the Isthmus gave him an opportunity of obtaining a livelihood for a short time. Obstacles were continually rolling into his path, yet he did not succumb, but with increased energy overcame them. He returned to San Francisco and, after a short period, finally sailed for Mazatlan, with his wife, where they made their home until his death. He there entered with his whole energy into the study

of his new profession. He closely observed the nature of the birds, their habits, and practiced the art of portraying them on paper. During the reign of Maximilian, he and his wife visited the City of Mexico, where they were cordially met by the Emperor and Empress, whose cultivated taste was quick to detect the skill of Mr. Grayson. An arrangement was made with the Academy of Science, whereby his work was to be published in Europe, and he to be assisted pecuniarly in the meantime, to enable him to proceed with his labors. The fall of the empire severed the contract.

Notwithstanding the losses of his works by shipwreck, he had preserved a hundred illustrations which were to have been published in four volumes, representing the various birds in different positions, together with drawings of the plants and trees among which the respective birds chanted their joyful notes. Mr. Grayson fairly won the name of the "Audubon of the Pacific."

It is to be hoped that the Government will yet see that the works, of so much value to science and art, will be placed before the public in the manner intended by their talented author.

In 1869, April 20th, he sailed to Isabel Islands, a group of rocks between Tres Marias and San Blas, professionally, where he caught a fever which carried him to the tomb. He expired on the night of the seventeenth of August following. His last thoughts were, perhaps, dallying with the artistic

skill of his own genius, or perhaps with Nature's works; for his last utterance was to his wife, as he exclaimed: "What a beautiful picture!"

A half century, less three days, was all that was allotted to one who had done much, and might through Divine Providence have done more, to illustrate the exquisite beauties of nature, and cause us to contemplate how much there is in the wondrous works of Nature's God, yet undeveloped to the great mass of mankind. So long as ornithology shall remain in the catalogue of human cultures, so long will the name of Andrew J. Grayson be a brilliant in the clustered names which have shed lustre on science and art.

We can almost imagine that his spirit took its flight through the balmy transparency of the skies, amid the triumphal songs of an army of the birds he so much loved.

There are many other residents of San José, whose lives possess many things of interest and instruction, but who did not arrive at that period which makes them noted as pioneers. And there are many who never had such an extraordinary position in public affairs as to come within the province of the historian; but who, nevertheless, have characteristic qualities which are, indeed, noteworthy. To go beyond the number that were prominent in early times, and those who have since become so by their public station, would

swell the list far greater than the intended compass of this work would warrant.

The early settlers whom I have thus succinctly sketched, were all men of sagacity, energy, and patriotism. They acted conspicuously at a time, and in a country, when the written law of the land was not much respected by a large class of men. Their history shows that they did not adhere to that law merely because it was the law, and through fear; nor because they believed that sufficient executive power was not wanting to enforce it—but because they were prompted by the proper instincts of right, by the principles of fidelity, good faith, moderation, and wisdom. And, as they have preserved through life a name unspotted, it entitles them to be placed on record with the events of contemporaneous history.

CHAPTER XXV.

QUICKSILVER MINES.

Discovery of the New Almaden ; Working of the Mine in 1824 by Suñol and the Robles ; Experiments by Andres Castillero, in 1845 ; Denouncement of the Mine by him ; his Proceedings to acquire Title thereto ; his Working of the Mine ; his Sale to Messrs. Barron, Forbes & Co.; their Possession and Work ; Furnaces and Process of Working therewith ; Geological Character and Chemical Analysis of the Ore ; Mode of Obtaining and Transporting Ores ; Products of the Mine ; Sale thereof.—Almaden Mine in Spain ; Comparison between the two Mines.—Enrequita Mine.—Title to the New Almaden.—Guadalupe Mine.

No quicksilver mine of any great importance had been worked or known in North America, prior to the discovery and working of that of the New Almaden, in Santa Clara county. Those in Mexico were of comparative minor importance. Its name, as is well known, is derived from the ancient one in Spain, referred to herein. It is a compound word, formed by the Arabic article "al," *the*, and the noun "maden," *mine—The Mine.*

The history of a mine of so much importance, of so much wealth, and so uncommon in our country, could scarcely be without some interest to the general reader ; and particularly to the residents of this valley, bordered by the hills that contain it.

The exact date of the discovery of this mine by the Indians is unknown, but it was more than half a century ago. Civilized man became acquainted with it in 1824. In that year an old Indian made it known to the Robles family and Luis Chabolla.

As I have stated in a former chapter, the Indians used it to paint their faces and body. They called it *moketka*—red earth. It was used to paint the church at the Santa Clara Mission, in 1825–6. The ore, or cinnabar, is a red sulphuret of mercury, and by being pulverized and moistened, forms a red pigment. In 1824, the Robles informed Don Antonio Suñol of its existence and location. It is situated about thirteen miles southwardly from San José. A perfectly level road leads from this city, eleven miles to the place where are established the furnaces by which the metal is extracted from the ore. Thence up a well-graded road to an elevation of about a thousand feet, a distance of two miles or more, will be found the mine.

The Messrs. Robles and Suñol were of opinion that the mine contained silver. With that view they worked it the first year that its discovery was made known to them. Mr. Suñol furnished a capital of about four hundred dollars, but derived no benefit therefrom; and, consequently, abandoned it. They did not then suppose that it contained quicksilver; in fact, they were unacquainted with the ore that contained such metal.

In the autumn of 1845, one Andres Castillero came to California on business, which took him to Sutter's fort. On the twelfth of November he left that place, and went to the Mission of Santa Clara. Some of the ore of this mine was exhibited to him. He pronounced it *silver*, with a *ley** of *gold*. But, while there experimenting, he ascertained the ore to contain quicksilver. He ordered a servant to pulverize a small quantity, which he sprinkled upon some live coals held in a small brick tile. After the ore became very hot, he took a tumblerful of water, and sprinkled it with his hand on the ore and coals. He then placed the empty tumbler over the coals upside down, where it remained for a few minutes; then withdrawing the tumbler to the light, saw minute particles of quicksilver in globular form. He thought it very rich, from the weight of the ore. He observed to the priest, Father Real, and Jacob P. Leese, who were present, that if it proved to be as rich as the quicksilver mines in Spain he had made his fortune, as the Mexican government had offered to any one for the discovery of such a mine in the Republic of Mexico one hundred thousand dollars.

Under the Spanish and Mexican mining laws, the foundation of the right to a mine is discovery. But the right is lost, unless the discoverer makes known the fact before the judicial tribunal, authorized to receive such declarations.

* Alloy.

The proceedings are *ex-parte*, and consist of a production of the ore, a description of the place where it was discovered and of the person of the discoverer. These facts being duly made known and recorded, the title passes by operation of law, unless within the time limited, some one having a better right, appears. The discoverer is required before he is entitled to a registry and juridical possession, to perform two certain acts: 1st. He must appear with a written statement of the facts necessary to be set forth; and, 2d, he must within ninety days thereafter, make a pit in the vein of his registry of the required dimensions. After this, formal possession can be given.

Castillero made attempts to denounce this mine according to law, so that he might obtain a perfect title thereto. On the twenty-second of November, 1845, he went before Pedro Chabolla, Alcalde in San José, and made the following document:

"Señor Alcalde of First nomination."

"Andres Castillero, Captain of permanent cavalry, and at present resident in this Department, before your notorious justification makes representation, that, having discovered a vein of silver, with a *ley* of gold on the rancho pertaining to José Reyes Berreyessa, retired Sergeant of the Presidio Company of San Francisco, and wishing to work it in company, I request that in conformity with the ordinances on mining, you will be pleased to fix up notices in public places of the jurisdiction, in

order to make sure of my right, when the time for the juridical possession may arrive, according to the laws on the matter. I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper, there being none of the corresponding stamp.

"Pueblo of San José Guadalupe, November twenty-second, eighteen hundred and forty-five.

"ANDRES CASTILLERO."

On the third of December following, Castillero appeared before the same Alcalde again, with another document, wherein he states, "that on opening the mine which I previously denounced in this Court, I have taken out, besides silver, with a ley of gold, liquid quicksilver, in the presence of several bystanders, whom I may summon on the proper occasion."

He asks to have that writing placed on file. He afterward solicited to be placed in juridical possession. Antonio Maria Pico, December 30th, 1845, certifies that he, as First Alcalde, there being no Juez de Letras (Professional Judge,) gave him possession. His words are: "I have granted three thousand yards (varas) of land in all directions, subject to what the general ordinance of mines may direct, it being worked in company, to which I certify, the witnesses signing with me." This was signed by Pico, and also by Antonio Suñol and José Noriega, as assisting witnesses. Castillero, as he wished to work the mine

in company, had formed a copartnership at the Mission of Santa Clara, on the second of November, 1845. He divided one half into three parts, which he disposed of as follows: Four shares to Don José Castro; four shares to Messrs. Secundino and Teodero Robles; and four shares to the Rev. Father José Maria R. S. del Real. The mine itself was divided into twenty-four barras, or shares.

Castillero employed Wm. G. Chard, an American, from Columbia county, State of New York, to reduce some of the ore. He took a gun barrel, charged it with pieces of ore, the size of a bean, stopped the vent with clay, put the muzzle in a vessel of water, and built a fire around the other end. The heat drove off the mercury in the form of vapor, which passing out at the muzzle, was condensed in the water, and precipitated itself to the bottom in the form of liquid metal. Three or four gun barrels were used in this way at the same time. And in this form he continued to work the ore for six or seven weeks.

While Chard was thus reducing the ore, Alcalde Pico, with the assisting witnesses, went there to do what they termed, giving juridical possession of the mine to Castillero.

A short period after this act of the Alcalde, a furnace was built by Chard, near the creek, where he transported the ore to be reduced. Owing to the ill-construction of the furnace, it was unser-

viceable, and was entirely abandoned. He obtained subsequently, six whaler's try-pots, capable of holding three or four tons of ore. Three of these pots were inverted over the other three, thus forming with each pair, a furnace. By building a fire around these, and having so arranged them that the mercurial vapor was conducted to the water, he succeeded in reducing about two thousand pounds of quicksilver.

Chard continued this until about August, 1846, when he, and the Indians working with him, left, and no more labor was performed there until the next spring, about May.

The discovery was made known to the Governor of California, in 1845, and the information, with a sample of the quicksilver, was sent to Mexico. In 1846, Mr. Thomas O. Larkin, American Consul at Monterey, communicated the facts of the discovery and the working of the mine, together with an explanation of the mode of acquiring title to it under Mexican law, to our Government at Washington. It was also visited by Fremont in 1846, who then estimated its value at about thirty thousand dollars.

In the winter of 1846-7, Castillero sold certain shares to Messrs. Barron, Forbes & Co., of Tepic, Mexico, as well as some to other persons. Barron, Forbes & Co. sent Robert Walkinshaw to take possession of the mine as their agent, who did so May 5th, 1847. He was accompanied by a man

named Alden. In November of that year, Mr. Alexander Forbes, of the above firm, came up from Mexico, with workmen, money, and all the requisite appliances for carrying on the work of reduction. A thorough examination was then made of the mine. It gave increased evidence of richness, and the working of it was prosecuted with vigor. Retorts were soon established for the reduction of the metal, and used until 1850, when furnaces were erected, that produced the metal in large quantities, under the superintendence of Captain (now General) H. W. Halleck.

These furnaces, with the condensing chambers, are from one hundred and fifty to two hundred feet long, and about ten feet high. The furnace proper is about fifteen feet long, and is divided into two compartments. The first is for the fuel; the second for the ore, which is termed the ore-bed. The partition wall between the fire and ore-bed has several apertures, of the size of a brick, through which the heat reaches the ore. Next, and adjoining the ore-bed, is a tower from twenty to thirty feet high, the top of which is bricked air-tight, and has a perpendicular brick partition. The wall of the tower adjoining the ore-bed, is perforated with several holes of the size of two bricks. The partition wall of the tower has within a foot of the top, an aperture about a foot square. The long condensing chamber is next adjoining the tower. It is divided into various compart-

ments. The second chamber of the tower connects with the first compartment of the condensing chamber by an aperture about the size of four bricks, which is within a foot of the bottom of the chamber.. The second compartment connects with the first of the condensing chambers, by an aperture of like size within a foot of the top of the chamber. The various compartments are thus connected with like apertures, alternately, at the top and bottom of the chamber. At the farther end of the condensing chamber is a high chimney to carry off the smoke. Between the chimney and the long and large condensing chamber, is a smaller chamber, over which water continually drips for the more rapid condensation of the mercurial vapor. Along the whole length of the condensing chamber, is an exterior trough. At the bottom of all the compartments of the condensing chambers, are holes which lead to the trough. At the farther end of the trough, near the chimney, is an iron kettle, which is the receiver of the quicksilver. For the purposes of reduction, the ore is pounded into pieces of about the size of a hen's egg, then placed in the ore-bed. The fuel is then fired, and when the ore has received a sufficient degree of heat, through the apertures of the wall, the quicksilver, in the form of vapor, is emitted, and passes with the smoke into the first chamber of the tower, thence it rises to the aperture in the partition wall, through which it goes

into the second chamber of the tower; thence down that chamber through the aperture near the bottom, into the first compartment of the long condensing chamber; thence it rises again, and passes through the aperture near the top, into the second compartment; and thus continues, rising and falling alternately, until it is condensed. By the time the smoke has reached the chimney, it is quite robbed of its mercurial companion. As the vapor passes from one compartment to the other, more or less of it is condensed and falls to the bottom, and oozes out of the holes that lead to the exterior trough; thence it runs into the iron kettle. Some of the smoke halts in its passage, and drops in the form of soot, at the bottom and sides of the various compartments. The same is removed by means of small doors thereto attached, for that special purpose.

Undoubtedly, a small percentage of the metal is conducted with the smoke up the chimney; but the process of condensation is now so complete that the waste is inconsiderable.

To illustrate to the reader the geological character and chemical analysis of the ore of this mine, I take the following from the "Metallic Wealth of the United States," by J. D. Whitney:

"The ore is found in connection with sedimentary strata, composed of alternating beds of argillaceous shales and layers of flint, which are tilted up a high angle, and much flexed. They are

considered by Mr. Black to be of Silurian age, but their position has not been determined with certainty. With these rocks the mercurial ores are mingled in a series of beds and laminations of great number and extent, so that the whole workings are very irregular and contorted. The masses of ore are separated by intercalated strata of rock of variable thickness, which are themselves often filled with seams and bunches of the sulphuret. Numerous veins of carbonate of lime traverse the rock in different directions, cutting through the ore and dislocating the small veins; and the same mineral lines cavities in the masses of cinnabar, being there finally crystalized, and sometimes containing bitumen in minute globules. The sulphurets of iron and copper, and arsenical pyrites, are associates of the ore, but they occur in very small quantities. An analysis of the ore by Prof. Hoffman gave: Mercury, 67.25; sulphur, 10.33; silica, alumina, etc., 22.55=100.13.

A great deal of labor has been rendered and money expended in seeking for the metal.

In 1850 and 1851, about two hundred men were employed. The expenditure amounted to forty thousand dollars per month, while the monthly amount of metal extracted was seven thousand and five hundred pounds, worth sixty-three thousand seven hundred and fifty dollars. Then, and generally since, the miners were com-

posed of Mexicans and Yaqui Indians. There have been several Cornish miners among them, and I believe there are now a few of that class in the employ of the company.

In early times, the ore was altogether transported from the mine to the furnaces on pack mules. Afterward it was principally carried in wagons; and now brought on cars, and also slid down on inclined planes.

An adit-level has been cut into the mine, for a distance of over one thousand feet. This adit is from one hundred and eighty to two hundred feet below the first opening of the mine; and is ten or twelve feet square, and stoutly braced with heavy timbers. Out of this is transported the ore in cars, moving on iron rails.

The mining hill is dotted here and there with small dwellings, occupied by the employees of the mine. A neat little village adorns the valley in the vicinity of the furnaces; and, among the buildings thereof, is a stately structure, embowered in a forest of beautiful trees and shrubs, and occupied by the superintendent of the mine.

The following statement will give some idea of the great wealth produced from this mine:

Date.	Ores consumed. Pounds	Per centage.	Flasks.	Pounds.
July 1850 to June 1851 ..	4,970,717 ..	35.89 ..	23,875 ..	1,826,437
" 1851 " " 1852 ..	4,634,290 ..	32.17 ..	19,921 ..	1,523,956
" 1852 " " 1853 ..	4,839,520 ..	27.94 ..	18,035 ..	1,379,677
" 1853 " " 1854 ..	7,488,000 ..	26.49 ..	26,325 ..	2,013,862
" 1854 " " 1855 ..	9,109,300 ..	26.23 ..	31,860 ..	2,437,290
" 1855 " " 1856 ..	10,355,200 ..	20.34 ..	28,133 ..	2,155,999
" 1856 " " 1857 ..	10,299,900 ..	18.93 ..	26,002 ..	1,989,153
" 1857 " " 1858 ..	10,997,170 ..	20.05 ..	29,346 ..	1,245,045
" 1858 " Oct. 1858 ..	3,873,085 ..	20.05 ..	10,588 ..	809,982
Nov. 1858 " Jan. 1861*..	....	....	....	....
Feb. 1861 " " 1862 ..	13,323,200 ..	18.21 ..	34,765 ..	2,659,522
" 1862 " " 1863 ..	15,218,400 ..	19.27 ..	40,391 ..	3,089,911
" 1863 " Aug. 1863 ..	7,162,660 ..	18.11 ..	19,564 ..	1,496,646
Nov. 1863 " Dec. 1864 ..	25,646,100 ..	16.40 ..	46,216 ..	3,535,524
Jan. 1865 " " 1865 ..	31,948,400 ..	12.43 ..	47,194 ..	3,610.341
" 1866 " " 1866 ..	26,885,300 ..	11.62 ..	35,150 ..	2,688,975
" 1867 " " 1867 ..	26,023,933 ..	7.05 ..	24,461 ..	1,871,266
" 1868 " " 1868 ..	....	10.12 ..	25,628 ..	1,950,542

* Mine closed by injunction.

The principal markets for the sale of the quicksilver of this mine, are in Mexico, China, South America, and the gold and silver mines of this State. The Almaden mine in Spain, and the Idria in Corinthia, in the Austrian Empire, furnish the greater portion of the mercury used in Europe. The Idria has been worked for many hundred years, and was considered as second to the Almaden, in Spain. The latter has been known as the oldest and richest quicksilver mine in the world; although some years, the yield of the New Almaden exceeded it by far.

From 1824 to 1849, the old Almaden averaged from two million to two million and five hundred thousand pounds, avoirdupois, per annum. In

1865, the New Almaden yielded nearly four million pounds; but when we consider the time in which the old Almaden has continually poured out its wealth, the amount is, indeed, wonderful. Pliny observes that the Greeks obtained vermillion from this mine, many hundred years before the Christian era. He also remarks that the mine poured forth one hundred thousand pounds of ore annually, to the Romans. At one time it was worked wholly by condemned criminals. This mine is situated in the province of La Mancha, near the frontier of Estremadura.

I have thus briefly described this ancient mine, because the New Almaden was named after it, and because comparisons are not unfrequently made, or attempted to be made, between the two.

The Eurequita quicksilver mine is about two miles northwest of the New Almaden, and belongs to the same company.

There are two hundred and twenty-one dwelling houses, stores, and shops, at the two establishments. The value of the real estate, with improvements, and all personal property at the mines, and in San Francisco, belonging to the company, was, December 31st, 1868, estimated at five hundred and seventy-two thousand one hundred and seventy-five dollars and ninety-five cents. This, of course, does not include the mines proper.

The title was claimed by the persons who occupied the premises, under the name of the New

Almaden Mining Company; but the petition was filed before the Board of Land Commissioners, in the name of Andres Castillero for his benefit, and those holding under him.

The petition set forth that Castillero discovered a mine of cinnabar in 1845; that he formed a company to work it on the twenty-second of November; that on the third of December, 1845, he denounced it, and on the thirtieth of December, received juridical possession in due form, from the magistrate of that jurisdiction; that the record of his mining possession was afterward submitted to the Junta de Fomento y Administracion de Mineria, which declared it to be legal, and recommended to the Executive, not only that it be confirmed, but that two square leagues be granted him on the surface of his mining possession; that the grant of two square leagues was made on the twentieth of May, 1846, and an order or patent of title issued to him on the twenty-third, with which he started to take possession, but was prevented by the war; that as soon as possible, he got a survey made; that by virtue of these facts, he acquired a perfect title, under which he and his grantees have held possession ever since 1845, expending immense sums of money upon it. The petition prays the Board to confirm to him "the two square leagues of land, as embraced in his mining possession and grant, as aforesaid." Such are the

facts as were laid before the Courts, together with documentary and oral evidence in support thereof.

The Board of Land Commissioners decided adversely to petitioner's claim, whereupon an appeal was taken to the U. S. District Court, where, January 18th, 1861, the decision of the Commissioners was reversed, and the claim of petitioners declared to be good and valid, to the mine known by the name of New Almaden, and of all ores and minerals of whatsoever description, in fee simple. That the mine is equal to seven pertenencias, being of a solid or a rectangular base, two hundred Castillian varas long, of the width established by the Ordenanzas of 1783, and a depth, including the surface to the centre of the earth; that they may select the said pertenencias, so that they shall be contiguous to each, that is, in one body, and to include the mouth of the original mine.

From this decision an appeal was taken to the United States Supreme Court. This Court at the December term, 1862, held that no such registry of the particulars concerning the mine, nor of the action of the Alcalde upon the allegations of the petition, nor of his proceedings in respect to the juridical possession of the mine was ever made, as is required by the ordinance; neither were the pertenencias measured nor definitely located; nor the boundaries fixed, nor the stakes set, as therein required. Registry has been required as the basis of

the title to a mine wherever Spanish law has prevailed, for more than three centuries. The Court was of opinion that no case ever showed the necessity of such registry more than the present one. The Court further held that the Alcalde could not act in the place of a Judge of First Instance, under the mining regulations. The Court seemed to think that the case was spotted all over with fraud; and the conclusion arrived at was, that the claim was invalid, and therefore the decree of the District Court was reversed, and the cause remanded, with directions to dismiss the entire petition.

Justice Catron gave a dissenting opinion, holding that Castillero acquired an incipient right, by discovery of the mine, and the surface of land lying above the mine, to the extent that it was adjudged to him by the District Court. He also was of opinion that the Alcalde had jurisdiction as a judicial magistrate, in the absence and non-existence of any authority in California, to make the registry and give possession.

This mine was claimed by four different parties; that is, by parties claiming under four distinct sources of title, namely: under the Justo Larias grant, the José R. Berreyessa grant, the title of denouncement by Castillero, and by the United States as being on public land. It was finally decided that the mine was on the Justo Larias grant, and that the furnaces and improvements of the company below the hill were on the Berreyessa

grant. The company bought in these two titles, to protect themselves.

An injunction was laid upon the mine in October, 1858, and remained thereon until February, 1861; during which time no work was performed there.

In 1864, the company sold the mine and all improvements for the sum of one million and seven hundred thousand dollars. The purchasers were a company, chartered under the laws of New York and Pennsylvania, and known as "The Quicksilver Mining Company." They fixed the capital stock at ten millions of dollars, divided into shares of one hundred dollars each. This company is the present owner of the mine. Until within a short period, the superintendence of the mine was, for the new company, under Mr. Samuel F. Butterworth, a man of culture, of refinement, and of great ability; and in the management of the affairs of the company gave ample proof thereof.

The Guadalupe mine is situated about four miles northwest of the New Almaden, and is now owned by the "Santa Clara Mining Association," of Baltimore, the officers of which are as follows: Robert D. Cullen, President; T. S. Bonner, Vice-President; James Thomas Brown, Superintendent. There are rich lodes in this mine, dipping to the southeast, deeper down than the present machinery is capable of keeping dry. At the bottom of the mine a lode of over four hundred feet in length has been

worked in four different places. The prospects are, if this mine be properly worked, that it will exhibit a wealth of metal not surpassed by any.

The amount now obtained from it is small in comparison with the yield of the New Almaden. There is not so much to interest the reader in its history as in that of the former mine; and I have, therefore, not thought it expedient to detail it.

CHAPTER XXVI.

Missions of Santa Clara and San Jose.—Santa Clara College, and University of the Pacific.

Comandante of San Diego and Father Peña make the first Visit to Santa Clara Valley in 1776; their Visit to San Francisco.—Father Peña returns to Santa Clara; he Builds a Cross, and says the first Mass under it.—Founding of Santa Clara Mission.—Death of Father Murguia.—Dedication of Mission Church.—Vancouver's Visit to, and Description of, the Mission.—Earthquakes.—Building of the present Mission Church.—Description of the Mission by a Spanish writer in 1822.—Population and Stock of Missions in 1834 and 1842.—Description of Missions by De Mofras.—Colonization of California.—Laws and Regulations of Secularization of the Missions.—Possession by the Priests under United States authority.—Possession of Santa Clara Mission by Redman and Clayton; Suits by and against them.—Missions Confirmed to Roman Catholic Church.—Opinion of Court on the Nature of Missions.—Santa Clara College.—San Josè Mission.—University of the Pacific.

Don Fernando Rivera, Comandante at San Diego, received a letter, in the month of September, 1776, from his excellency the Viceroy at the city of Mexico, which appeared to sting his conscience a little, from a neglect of duty. His excellency informed the distant military gentleman, commander over a wide domain, but of few soldiers, that he had understood that two Missions by the bay of San Francisco had already been founded.

As the Comandante was more ignorant of the progress of the northern part of his territory than he should have been; and as he had the twelve soldiers who were to be the guards of the two Missions, if established, he doubtless felt not a little chagrined.

He was not long in preparing for the journey, whereby he might learn the true state of façts pertaining to the surroundings of the bay. Having everything in readiness, he set out with his twelve soldiers for the north, and after many days' travel reached Monterey, where he was informed that the Mission of San Francisco had been founded, but no other in this section. In order to assist in the establishment of the second, he was accompanied by Father Tomas de la Peña, one of the two ministers who had been designated for that purpose. The Comandante, the Father, and their escort of soldiers, proceeded by land to San Francisco. As they reached the site where the Mission of Santa Clara is situated, they were highly pleased with the surroundings; and were not long in determining that it was a most desirable location for a Mission. After sufficiently surveying the premises, they continued their journey to San Francisco, reaching there on the 26th of November. Father Peña remained at the Mission, but the Comandante, as was natural, wished to visit the Presidio, which he did. On the 30th, the latter returned to San Carlos Mission, at Monterey, for the purpose

of sending Father Joseph Murguia, with the escort, and the necessary articles requisite in founding the new Mission in San Bernardino valley, now Santa Clara. All the preparations were at the Mission of San Carlos.

In the latter part of the month of December, some of the soldiers and their families, who were to assist at the founding of the new Mission, arrived at San Francisco; and on the sixth day of January, Father Peña, the Lieut.-Commandant of the Presidio, the soldiers and their families, went forth through the valley to find the selected spot, to erect a new temple in the name of Christianity and humanity. Having reached their place of destination, the first act they performed was to erect a cross, which was blessed and adored (*bendita y adorado*). Under the arms of it was raised an altar; and, on the twelfth of January, A. D. 1777, Father Tomas de la Peña by that cross said the first mass ever uttered in this valley. It was to the aborigines a novel sight, doubtless; but one to which they soon became accustomed, by the exceeding great industry and patience of the good Fathers. Within a few days thereafter, they were joined by Father Murguia and escort, with all the articles required for the commencement of the new settlement in the work of salvation.

After the parties had become rested from the fatigue of their journey, and everything was in readiness, the formal ceremony of founding the Mis-

sion of Santa Clara,* took place on the eighteenth day of January, 1777†. Thus dates the first settlement in this beautiful valley. The names of Fathers Peña and Murguia will ever be held in grateful remembrance for their toils and patience, in the good work of Christainity, "in a corner of the earth" inhabited by none but the uncivilized. Full of the love of Faith; deeply sensible of the magnitude of their undertaking; devoted to the cause of the Christian religion; with willing hearts they relinquished the comforts of an European life, the pleasure of cultivated societies, to direct their ambition, as shepherds, to gather into the folds of religion, the wild and uncultivated flocks.

A little more than seven years had elapsed, when Father Junipero Serra, President of the Missions of California, becoming somewhat feeble from age, but having some unoccupied time, thought best to visit the several Missions, and give his last confirmations; and also, to dedicate the Mission of Santa Clara, having been invited to perform that ceremony by the ministers thereof. The sixteenth of May, 1784, had been designated as the time at which the imposing ceremony should be performed. He visited this Mission for a day or two about the first of May, and passed on to

*Subsequently called by the Indians, *Thamlena*.

†Life of Fr. Junipero Serra, by the Rev. Francisco Palou, 1787, Mexico.

San Francisco, on the fourth of that month, without making any confirmations, intending to do so on his return, at the day appointed. He arrived at San Francisco without any particular change in his health, being accompanied by Father Palou. Within a few days, a messenger arrived with the intelligence that Father Murguia was quite ill. Father Palou, receiving a blessing from the venerable prelate, started immediately for Santa Clara Mission, and, on his arrival, found Father Murguia exceedingly low with a fever. The latter continued failing, until the eleventh of May, when his spirit ascended to Him who gave it. Father Junipero Serra did not attend the funeral, on account of his feebleness. The Padrino of the dedication of the church, having invited the Governor of the Territory, Don Pedro Fages, to attend the ceremony, he, in company with Father Junipero Serra, proceeded to Santa Clara Mission, arriving on the fifteenth. When the good Fathers met, they were so overcome by the death of their brother Murguia, they could not give utterance to a single word, but clasped each other, in silent and manful embrace. It was, indeed, sad to lose one of their number in this unsettled and uncivilized country, far away from their home, where so very few intelligent beings were gathered to toil unceasingly.*

On the following day, the sixteenth of May, at two o'clock, P. M., the ceremony of dedication,

*Life of Father Palou, by Father Junipero Serra, page 267.

according to the Roman ritual, commenced. All the neophites, many of the unchristianized Indians, the troops, and many people from the Pueblo of San José, were present to witness the imposing scene. The next day, Sunday, the venerable Father Serra chanted mass, which produced a very deep and solemn impression upon the congregation. The death of Father Murguia, the principal minister of the Mission, but a few days prior thereto, the presence of the aged Father, with almost one foot in the grave; his saddened face crowned with hoary locks; his known piety and goodness; his solemn accents rendered to the Almighty, seemed to bring to the mind of every being present, reflections on the uncertainties of this world, and the necessity of being prepared to meet the next. He confirmed on that day those who had been prepared for it.

The vacancy occurring by the death of Father Murguia was filled by Friar Diego Noba, one of the supernumaries at Monterey.

The venerable and pious Father, Junipero Serra, died at Monterey, at two o'clock, A. M., on Saturday, St. Augustine's day, (August 28th,) 1784, and was buried on the following day. His age was seventy years nine months and four days. Before he was called away, he had the gratifying consolation of knowing that all work here among the savages had not been in vain. He had witnessed

at the Mission of Santa Clara, six hundred and sixty-nine baptisms.*

It will be interesting to the reader to peruse a brief account of a visit made by the famous voyager, Capt. Vancouver, to the Mission, in the last century. Having left San Francisco on the twentieth of November, 1792, for Santa Clara, he observes: "Soon after dark, we reached Santa Clara Mission. Our journey, except through the morass, had been very pleasant and entertaining, and our reception at Santa Clara, by the hospitable Fathers of the Mission, was such as excited in every breast the most lively sensations of gratitude and regard. Father Toma de la Peña appeared to be the principal of the Missionaries. The anxious solicitude of this gentleman, and of his colleague, Father Joseph Sanchez, to anticipate all our wishes, unequivocally manifested the principles by which their conduct was regulated.

"The buildings and offices of this Mission, like those of San Francisco, form a square, but not an entire enclosure. It is situated in an extensive fertile plain, the soil of which, as also that of the surrounding country, is a rich, black, productive mold, superior to any I had before seen in America.

"The church was long and lofty, and as well built as the rude materials of which it is composed would allow, and compared with the unimproved

*Life of Father Junipero Serra, by Father Palou.

state of the country, was infinitely more decorated than might have been reasonably expected.

"Apartments within the square in which priests resided, were appropriated to a number of young female Indians, and the like reasons were given as at San Francisco, for their being so selected and educated. Their occupations were the same, though some of their woolen manufactures surpassed those we had before seen, and wanted only the operation of fulling, with which the Fathers were unacquainted, to make them very decent blankets. The upper story of their interior oblong square, which might be one hundred and seventy feet long, and one hundred broad, was made use of as granaries, as were some of the lower rooms; all of which were well stored with corn and pulse of different sorts; and, besides these, in case of fire, there were two spacious warehouses for the reception of grain, detached from each other, and the rest of the buildings erected at a convenient distance from the Mission. These had been recently furnished, contained some stores, and were to be kept constantly full, as a reserve in the event of such a misfortune.

"The maize, peas and beans, are sown in the spring months, and succeed extremely well, as do hemp and flax, or linseed. The wheat affords in general, from twenty-five to thirty for one, according to the seasons, twenty-five for one being the least return from their fields, notwithstanding the

enormous waste occasioned by their rude method of threshing, which is always performed in the open air by the treading of cattle. Neither barley nor oats were cultivated. As the superior grains could be cultivated with the same labor that the inferior ones could, they had sometime ago declined the cultivation of them.

"Here were planted peaches, apricots, apples, pears, figs and vines, all of which, except the latter, promised to succeed very well. The failure of the vine here, as well as at San Francisco, is ascribed to a want of knowledge in their culture, the soil and climate being well adapted to most sorts of fruits. The priests had a guard of a corporal and six soldiers."

This brief account bears testimony of the kindness of the Fathers to strangers who chanced to visit them; and of their prudence and care for the neophites under their protection.

In 1812, an earthquake cracked the church considerably, but did not cause any portion of it to fall; but in the year 1822, the shock of an earthquake was so severe as to injure the church very materially, though it was not thrown down, as has been stated; the damage being so great, however, that it was thought best to take it down, rather than attempt to repair it. In 1825–6, the present church at the Mission was constructed. It was completed in a remarkably short period, considering the times and circumstances. The whole was

finished in less than two years. In former times, a number of oaks and laurel were growing around and near the Mission. The ancient church was northeast of the site of the present one, some several hundred yards.

Bryant, in his work on California, has an extract from a Spanish writer upon the political and social condition of California in 1822. In speaking of the Missions, that writer says: "The edifices in some of those Missions are more extensive than in others, but in form they are all nearly equal. They are all fabricated of mud-bricks, and the divisions are according to necessity. In all of them may be found commodious habitations for the ministers, storehouses to keep their goods in, proportional granaries, offices for soap-makers, weavers, blacksmiths, and large pastures, and horse and cattle pens, independent apartments for Indian youths of each sex, and all such offices as were necessary at the time of its institution. Contiguous to, and communicating with the former, is a church, forming a part of the edifices of each Mission; they are all very proportionable, and are adorned with profusion.

"The Indians reside about two hundred yards distant from the abovementioned edifices. This place is called the rancheria. Most of the Missions are made up of very reduced quarters, built with mud-bricks, forming streets; while in others, the Indians have been allowed to follow their primi-

tive customs—their dwellings being a sort of hut, in a conical shape, which at the most do not exceed four yards in diameter, and the top of the cone may be elevated three yards. They are built of rough sticks, covered with bulrushes or grass, in such a manner as to completely protect the inhabitants from all the inclemencies of the weather. In my opinion, these rancherias are the most adequate to the natural uncleanliness of the Indians, as the families often renew them, burning the old ones, and immediately building others with the greatest facility. Opposite the rancherias, and near to the Mission, is to be found a small garrison, with proportionate rooms for a corporal and five soldiers with their families. This small garrison is quite sufficient to prevent any attempt of the Indians from taking effect, there having been some examples made, which cause the Indians to respect this small force. One of these pickets in a Mission has a double object; besides keeping the Indians in subjection, they run post with monthly correspondence, or with any extraordinaries that may be necessary for government.

"All the Missions in this California are under the charge of religious men of the order of San Francisco. At the present time, their number is twenty-seven, most of them of an advanced age. Each Mission has one of these Fathers for its administrator, and he holds absolute authority. The tilling of the ground, the gathering of the harvest,

the slaughtering of cattle, the weaving, and everything that concerns the Mission, is under the direction of the Fathers, without any other person interfering in any way whatever; so that if any one Mission has the good fortune to be superintended by an industrious and discreet padre, the Indians obtain in abundance all the real necessaries of life; at the same time, the nakedness and misery of any one Mission are a palpable proof of the inactivity of its director. The Missions extend their possession from one extremity of the territory to the other, and have made the limits of one Mission from those of another. Although they do not require all this land for their agriculture and the maintenance of their stock, they have appropriated the whole; always strongly opposing any individual who may wish to settle himself or his family on any piece of land between them. But it is to be hoped that the new system of illustration, and the necessity of augmenting private property, and the progress of reason, will cause the government to take such adequate measures as will conciliate the interests of all."

In 1823, the Mission of Santa Clara had a population of one thousand three hundred and ninety-five. In the year 1834, it possessed one thousand eight hundred Indians, thirteen thousand horned cattle, twelve hundred horses and mules, fifteen thousand sheep, goats, and hogs, and six thousand bushels wheat and corn. In 1842, it had three

hundred Indians, one thousand five hundred horned cattle, two hundred and fifty horses and mules, and three thousand sheep, goats, and hogs.

M. Duflot de Mofras, an attaché of the French legation at Mexico, was detached from that service in 1840, by Marshal Soult, at that time President of the Privy Council of Louis Phillipe, for the purpose of making a thorough reconnoisance of California and Oregon. In 1846, the information he gathered was published in Paris, by order of the King, in two octavo volumes. In that work is given a description of the Mission of San Luis Rey. As the regulations of all the Missions were the same, and their structures also, with slight deviations in architectural finish, I will herein give his description of that Mission. He thus speaks: "The building is a quadrilateral. The church occupies one of its wings; the façäde is ornamented with a gallery. The building, raised some feet above the soil, is two stories in height. The interior is formed by a court. Upon the gallery, which runs around it, open the dormitories of the monks, of the major-domos, and of travelers; small workshops, school-rooms, and store-rooms. The hospitals are situated in the most quiet parts of the Mission, where the schools are also kept. The young Indian girls dwell in the halls, called the monastery (el monjero); and they themselves are called nuns (las monjas); they are obliged to be secluded to be secure from outrage by the Indians.

Placed under the care of Indian matrons who are worthy of confidence, they learn to make cloths of of wool, cotton, and flax, and do not leave the monastery until they are old enough to be married. The Indian children mingle in the schools with those of the white colonists. A certain number, chosen among the pupils who display the most intelligence, learn music, chanting, the violin, the flute, the horn, the violincello, and other instruments. Those who distinguish themselves in the carpenter's shop, at the forge, or in agricultural labors, are appointed alcaldes, or chiefs, (overseers,) and charged with the direction of a squad of workmen. Before the civil power was substituted for the paternal government of the missionaries, the administrative body of each Mission consisted of two monks, of whom the elder had charge of the interior and of the religious instruction, and the younger of the agricultural works. In order to maintain morals and good order in the Missions, they employed only so many whites as were absolutely necessary. for they well knew that their influence was wholly pernicious, and that an association with them only developed among the Indians those habits of gambling and drunkenness to which they are unfortunately too much inclined." *

"The Indians were divided into squads of laborers. At sunrise, the bell sounded the angelus,

* 1 De Mofras, 261, etc.

and every one set out for the church. After mass, they breakfasted, and then went to work. At eleven they dined and this period of repose extended to two o'clock, when they returned to labor until the evening angelus, one hour before sunset. After prayers and the rosary, the Indians had supper, and then amused themselves with dancing and other sports. Their diet consisted of fresh beef and mutton, as much as they chose; of wheat and corn cakes, and of boiled puddings (or porridges) called *atole* and *pinole*. They also had peas, large or small beans, in all an "almud," or the twelfth part of a *fanega* a week. For dress, they wore a linen shirt, pantaloons, and a woolen blanket; but the overseers and best workmen had habits of cloth, like the Spaniards. The women received every year two chemises, a gown, and a blanket. When the hides, tallow, grain, wine, and oil were sold at good prices to ships from abroad, the monks distributed handkerchiefs, wearing apparel, tobacco, chaplets, and glass trinkets among the Indians; and devoted the surplus to the embellishment of churches, the purchase of musical instruments, pictures, sacradotal ornaments, etc. Still they were careful to keep a part of their harvest in the granaries to provide for years of scarcity."*

De Mofras explored this country in the years 1840, 1841, 1842.

* 1 De Mofras, 263, 267.

In the colonization of California, the method was tri-form: The Missions were under the ecclesiastical; the Presidios under the military; and the Pueblos under the civil, authorities of the government. They were all established with a view to the general advancement of the territory. The Missions were chiefly for the civilization of the Indians; the Pueblos for the settlement of the territory by the whites; and the Presidios for the protection of both.

The Missions were never intended to be of long duration. It was supposed that within a dozen years the Indians would have become so far advanced in the art of civilization as would warrant their taking position in the ranks of the citizens of the nation; and that the Missions as such would have been abolished, and towns or pueblos spring up in their stead. In the fore part of this century, the Cortez of Spain turned its attention to the condition and progress of the California Missions, receiving therefrom no very gratifying information. Finally, that body in 1813, passed a decree that savored of the secularization of the Missions. Yet, secularization did not take place. The government of Mexico, however, in 1833, August 17th, declared that it would proceed to secularize the Missions of Upper and Lower California.

Article 2d of that law provided that in each of said Missions a parish should be established, under the charge of a parish priest of the secular clergy,

with a salary of from two thousand to two thousand five hundred dollars per annum, at the discretion of the government. They were to exact no emolument for marriages, baptisms, burials, of any other religious functions. This law contained fifteen articles, setting forth the manner of proceeding. On the ninth of August, 1834, General Figueroa promulgated provisional regulations for the secularization, agreeable to the spirit of the aforesaid law, and instructions received from the supreme government of Mexico. On the third of the following November, the California Deputation, at Monterey, passed additional regulations pertaining thereto. In 1835, November 7th, the Congress of Mexico decreed, that until the curates mentioned in Article 3, of the law of August, 1833, should take possession, the government would suspend the execution of the other articles of said law, and maintain things in the state they were in before said law was enacted.

It appearing to Gov. Alvarado that the administrators in possession of the Missions did not know how to act in regard to their dependence upon the political government; and the Departmental Junta not being in session to consult with, respecting the necessary steps to be taken under such circumstances, the Governor, January 17th, 1839, dictated certain further regulations in regard to the management thereof.

The Governor having the following year observed closely the condition of the Missions, and finding that great abuses and losses had occurred, provided on the first of March, 1840, that the situations of administrators should be abolished in the Missions, and in their stead mayor-domos to be established. In providing salaries for the mayor-domos of the respective Missions, that of Santa Clara was allowed four hundred and eighty dollars per annum, and that of San José six hundred dollars.

General Micheltorena, having been sent from Mexico as Governor of California, as has been observed in a former part of this work, issued a proclamation, on the twenty-ninth of March, 1843, ordering a majority of the Missions to be again placed in charge of the priests, in consequence of an arrangement entered into between him and the different prelates of the Missions. Among the number were those of Santa Clara and San José.

The Departmental Assembly, May 28th, 1845, declared that some of the Missions should be rented, and others should be converted into pueblos or towns. Santa Clara and San José Missions were of the number to be rented. It was declared that the renting should take place as soon as the difficulties could be gotten over, which then existed with respect to the debts which those Missions owed.

The Assembly, on the third of April, 1846, decreed that if the property on hand was not sufficient to satisfy their acknowledged debts, attention should be had to what the laws determine respecting bankruptcies, and steps should be taken accordingly.

Don Pio Pico, as Governor, had sold some of the Missions; and after the Americans had taken possession of Monterey, the Departmental Assembly fled to Los Angeles, and there in session, October 20th, 1846, passed a decree annulling all sales of Missions made by Pico. October 31st, said decree was ordered to be published by José Maria Flores, who styled himself Governor and Commandant-General, *ad interim.*

Gen. Kearny, of the U. S. Army, Governor of California, ascertaining that many disputes had arisen about the right to various Missions, including those of Santa Clara and San José, ordered that the Missions should remain under the charge of the Catholic priests, as they were when the United States flag was first raised in the territory; that the priests were to be responsible for the preservation of said Missions and property while under their charge. He further ordered the Alcaldes to remove any persons trespassing or intruding upon them.

Gen. José Castro had given to Father José Maria Real certain documents, bearing dates respectively May 25th and June 16th, 1846,

whereby he purported to authorize him to make sales of the Santa Clara Mission lands. Father Real communicated with Col. R. B. Mason, U. S. Army, and Governor of California, in regard thereto. Whereupon, Gov. Mason replied, Jan. 3d, 1848, to his reverence, declaring that the authority given by Castro was void, and all sales under it null and void. Father Real was then minister at Santa Clara Mission.

The term "Mission" includes only the collection of houses, vineyard, and orchards in the immediate vicinity of the churches, including the stock of cattle and other personal property in the possession of the priests, and useful and necessary in carrying on the establishment. The "Mission lands," lands adjacent and appurtenant to the Missions, used by them for grazing purposes, were occupied by them only by permission, but were the property of the nation, and at all times subject to grant, under the colonization laws. Such is the doctrine laid down in Ritchie's case, 17 Howard, U. S. S. C.

In 1847, some of the Americans were about to squat upon the Mission premises. Gen. Kearny hearing of it, sent a detachment of soldiers under Capt. (now Gen.) Naglee, to put out the settlers and give possession to the priests. In 1849, or first part of 1850, Antonio M. Osio, of Monterey, went into possession of the orchard, under title emanating from the authority of Gen. Castro, in

1846. Osio rented it out to a Frenchman for three years, who remained in possession until about November, 1850. He was much annoyed by the early settlers, and finding that it would be a profitless labor to attend to it, abandoned the lease. The doors, gates, and other improvements which he had placed thereon, he removed. Osio was then in Monterey, but Father Real was acting as his agent. The latter observing the place to be in a state of waste, and hearing that some of the settlers were preparing to squat on it, called upon Mr. Charles Clayton, then Alcalde at Santa Clara, and solicited that he should place some reliable man in possession until Osio should arrive from Monterey; observing at the same time that, whoever should thus take charge, should have a lease from Osio .upon reasonable terms. With that understanding, Joel Clayton went into possession, and began to make improvements. Upon the arrival of Osio, Mr. Clayton was informed that a man in San Francisco had rented the premises, and had paid a portion of the rent in advance; that, in consequence thereof, he (Clayton) could not obtain a lease, and that he must surrender possession. This he refused to do, unless he was first reimbursed for the expenditure he had made. Osio, declining to pay the damages, Clayton remained in possession. Under a judgment which had existed against the Mission, the orchard had been sold by the Sheriff, and James F. Reed and

others claimed the orchard by virtue of that sale. Joel Clayton obtained a lease under the Reed title. Osio then commenced suit for possession; but before the trial came off, Charles Clayton, John H. Watson, James M. Jones, and Joshua W. Redman purchased a title to the orchard made under a sale by Pio Pico, as Governor, in 1846, to Benito Dias, Juan Castanada, and Larias Anellnas. Charles Clayton, Redman, and others, brought suit for possession against Joel Clayton. He disclaimed any right to the premises, and a writ of restitution was issued, placing plaintiffs in possession. Osio instituted suit against the plaintiffs and defendant, charging collusion. The suit was tried at San José, and Osio obtained judgment. James M. Jones, being at the time of the trial at Sandwich Islands, soon thereafter returned; and, appearing in Court, moved for a new trial upon the ground of surprise, which motion was granted. Upon motion and affidavits, a change of venue was had, and the cause ordered to Santa Cruz to be tried; but Osio having abandoned the suit, it was dismissed. Redman and Clayton continued in possession, reaping the benefit of the orchard, which at that time was very great, as fruit was scarce and consequently high in price.

After the Jesuits took the place of the order of San Franciscans, Father Nobili was stationed at Santa Clara Mission. He instituted suit against Redman and Clayton for possession of the orchard.

The case was tried in Alameda county, early in 1855. After plaintiff closed his case, on motion of defendant's counsel, a nonsuit was granted. Plaintiff appealed to the Supreme Court, and there the judgment of the Court below was affirmed.

In the meantime, Bishop Alemany had filed his petition before the Land Commissioners, praying for a confirmation of all the Mission property in the State, as the property of the Roman Catholic Church. His claim was finally confirmed, and the land embraced therein patented. Then, R. A. Redman, as administrator of his father's estate, and Charles Clayton, compromised with Bishop Alemany; the two former giving a quit-claim to the latter of their right to the orchard, and the latter giving Redman and Clayton a lease of the property for six years, at the rate of one thousand dollars per annum.

Judge Felch, of the California Board of Land Commissioners, in delivering the opinion of the Board, in the case of the Bishop, states clearly the theory of the Missionary colonization, as follows: "The Missions were intended, from the beginning, to be temporary in their character. It was contemplated that in ten years from their first foundation they should cease. It was supposed that within that period of time the Indians would be sufficiently instructed in Christianity, and the arts of civilized life, to assume the position and character of citizens; that these Mission settle-

ments would then become Pueblos; and that the Mission churches would then become parish churches, organized like the other establishments of an ecclesiastical character in other portions of the nation where no Missions had ever existed. The whole missionary establishment was widely different from the ordinary ecclesiastical organization of the nation. In it the superintendence and charge was committed to priests, who were devoted to the special work of Missions, and not to the ordinary clergy. The monks of the College of San Fernando and Zacatecas, in whose charge they were, were to be succeeded by the secular clergy of the national church, the missionary field was to become a *diocese;* the President of the Missions to give place to a *bishop;* the Mission churches to become *curacies;* and the faithful in the vicinity of each parish to become the parish worshippers."

I have thus far shown the theory and the manner of conducting the Missions; that the great body of land used and possessed by them belonged to the nation; and that the Missions proper, such as buildings, gardens, and orchards have been confirmed to, and are now in, the possession of the Roman Catholic Church, under the charge of the Bishop.

Upon the premises of the ancient Mission of Santa Clara now stands the Santa Clara College. It is under the supervision of the Fathers of the Society of Jesus. It was founded in the year 1851,

by the Rev. John Nobili, and on the twenty-eighth of April, 1855, it was incorporated; receiving thereby power to confer degrees, and to possess such rights and privileges as other literary institutions.

The Rev. A Varsi, S. J., is President and Prefect of Studies, and Rev. Joseph Canedda, S. J., is Vice-President. There are about two hundred students in this college. This is one of the finest colleges in this State. Its buildings are spacious, convenient, and kept in the most cleanly manner. I learned from a distinguished Professor of Chemistry, belonging to a Protestant University, that Santa Clara College had the best chemical apparatus for experimenting of any college in the United States.

Father Acolti, now of San Francisco, was formerly attached to the college, and did much to promote its welfare. He is an accomplished scholar, a pious man—most social, affable and popular.

The general character of the Missions having been described, it will be unnecessary to go into details in regard to the Mission of San José. It is not now within the limits of Santa Clara county. When the Legislature formed the county of Alameda, in 1853, it excluded that Mission from this county. As has been herein before stated, the Mission of San José was founded on the eighteenth day of June, 1797. The church of this Mission was injured considerably in the years 1812 and

1822 by earthquakes. It stood until the year 1868, when it was torn down. The earthquake in October of the latter year made its walls unsafe. I have before mentioned, herein, the diversity of idioms spoken at this Mission during the period in which the work of civilization was going on.

About the twentieth of September, 1846, Col. J. C. Fremont, by order of General Kearny, took possession of the Mission property, and turned the same over to Thomas O. Larkin, to hold for the United States. And in the spring of 1848, it was transferred by the Government to Father Real. In July, 1849, E. L. Beard took possession of the same, by some claim obtained under the Mexican authorities, but was compelled subsequently to surrender it to the church, it having been confirmed to Bishop Alemany, for the benefit of the Roman Catholic Church.

The University of the Pacific (Methodist Episcopal), at Santa Clara, is a flourishing institution. New buildings for this college are now in process of erection on the grounds purchased for that purpose, on the Stockton ranch, midway between San José and Santa Clara. This University was incorporated in the year 1851. Its number of professors and teachers are eight. The whole number of students in 1868 and 1869 was one hundred and sixty-four. Thirty-four young gentlemen have graduated at this college, twenty of whom received the degree of A.B., and fourteen

that of B.S. Seventeen young ladies have graduated with the degree of M.S. Eight gentlemen have received the degree of A.M. in course.*

In the year 1858, Thomas H. Laine and John W. Owen, constituting the first class graduating in the classical course in any college in California, received the degree of A.B.

The yearly expense per pupil is three hundred and twenty dollars. The sessions commence about the first of January and first of August. T. H. Sinex, D.D., is President of the University. On the tenth of September, 1870, at one o'clock P. M. the corner-stone of this University was laid. A procession was formed at the Methodist Episcopal camp-ground, on the Alameda, and proceeded thence to the site of the building. Thomas H. Laine, Esq., delivered an able address on that occasion. This institution bids fair to be among the finest on the Pacific coast.

* Report of Super. Pub. Instruction of California.

CHAPTER XXVII.

SANTA CLARA COUNTY.

Area of County; Population in 1852, 1860, and 1870; Number of Children; Rate of Assessment on Property; County Indebtedness; Value of Property in the County; Number of Live Stock; Productions.—Angora Goats.—Adaptability of Soil and Climate to all Plants.—Health of Climate.—Temperature in each Month.—Philosophy of the Pacific Climate.—Climate of Santa Clara Valley.—Bayard Taylor's Description of the Valley.

THE county of Santa Clara, embracing a part of the great valley which I have already topographically described, contains about thirteen hundred square miles. The dividing line between it and the county of Stanislaus not having been definitely surveyed, nothing more than an approximate estimation can be given of its area. I propose now to speak of its population, wealth, productions, and climate.

In 1852, when this county included a part of the now Alameda county, its population numbered six thousand six hundred and sixty-four. In 1860, having the same area as now, it contained eleven thousand nine hundred and twelve. The United States census taken this year gives twenty-five thousand two hundred and sixty-nine inhabitants residing in the different townships, as follows: twelve thousand three hundred and forty-six, in

San José; three thousand one hundred and thirty-nine in Santa Clara; three thousand and thirty-seven in Gilroy; one thousand eight hundred and nine in Fremont; one thousand six hundred and four in Almaden; one thousand two hundred and ninety-three in Redwood; eight hundred and seven in Burnett; six hundred and forty-five in Milpitas; and five hundred and eighty-eight in Alviso.

There are in the county fifty-five school districts, which is a greater number than any other county in the State has, except San Francisco. There are six thousand one hundred and eighty-eight scholars between five and fifteen years; three thousand and eighty of whom are boys. There are three thousand one hundred and seventy children under the age of five. There are one thousand scholars in private schools between five and fifteen years. The number of children in this county exceed that of any other, except San Francisco.

The amount of property assessed in this county exceeds in value that of any other, except San Francisco.

The rate of assessment this year was two dollars and thirty-seven and one half cents on a hundred dollars, apportioned as follows: State purposes, eighty-six and one half cents; current expense fund, seventy cents; road fund, thirty cents; school fund, twenty-five cents; infirmary fund, ten cents;

interest tax fund (West. P. R. R.) nine cents; interest tax fund, (San Francisco and San José R.R.) six cents; bounty fund, (squirrel and gopher) one cent.

The farming and pasture lands are not assessed over about one fourth their value; and city property one half. The taxes in the city of New York amounts to one per cent. on the full value, which makes them about equal to the taxes here.

One hundred and thirty thousand dollars will cover the indebtedness of the county. It is true that the county owes one hundred and fifty thousand dollars for railroad stock; but the stock is worth the amount. The bonds of the county are at par. No county in the State, and scarcely any in the United States, can exhibit so fair a fiscal record. It is the wealthiest county in the State, except San Francisco.

The value of property is estimated at forty million dollars, a little over one fifth of which is in personal estate.

The number of live stock is as follows: Eight thousand and thirty two horses, two hundred and seventy-eight mules, seven thousand four hundred and eighteen cows, three hundred and ninety-two work oxen, fifteen thousand and forty-five stock cattle, eleven thousand five hundred and sixty-seven sheep, and forty-six thousand nine hundred and forty-seven hogs.

The productions this year are as follows: One million one hundred and fifty-five thousand eight hundred and sixty-nine bushels wheat, fourteen thousand three hundred and twenty-nine bushels oats, three hundred and ninety-one thousand four hundred and nine bushels barley, twenty-seven thousand nine hundred and seventy bushels corn, one thousand five hundred and forty bushels rye; besides, thirty-one thousand seven hundred and sixty-nine bushels Irish potatoes and one hundred bushels sweet potatoes, one hundred and forty-two thousand two hundred pounds wool, seventy-six thousand one hundred and fifty gallons wine, one hundred and seventy-four thousand three hundred and ninety-one pounds butter, five hundred and forty-nine thousand two hundred and ninety pounds cheese, one hundred and twenty-six thousand two hundred and sixty-five gallons milk, forty-six thousand and sixty tons hay, seventy-two thousand nine hundred and forty pounds of fruits, ten thousand and twenty-one pounds peas and beans, one hundred and nine thousand seven hundred and thirty-nine pounds garden products, ninety-four thousand pounds hops, one thousand nine hundred and twenty pounds honey.

The experiments in raising the silkworm and the mulberry tree have proved that the climate and soil is well adapted to both, and it is estimated that silk can be manufactured here for less money than it can be exported under the present tariff.

The experiment also in raising the Angora goat has proved successful beyond expectation. The length and softness of the hair is attributable to the climate. If the animal is kept any length of time in Europe its hair loses its softness, and does not grow to the same length. Here, the climate is so well adapted to the animal that not only does the hair retain its lustre and softness, but the animals produced surpass in every way those imported from Angora. Their hair is softer, having more lustre and grows to a greater length. Their constitution is healthy, and their bodies larger. The raising of this class of animal cannot be otherwise than profitable. Its beautiful silky hair is manufactured into the style of goods known as mohair; and in the East, the Oriental morocco leather is made of the skin.

The climate and soil are wonderful in their support of vegetation. They are less selfish than man, for they refuse no plant the privilege of flourishing freely and luxuriantly, be it from Africa, China, Greenland, or any other habitable part of the globe. As one views the varied host of plants it really appears to him as though Nature had called a convention of the vegetable kingdom, without exception to color, and seeing the harmony which prevails, she has concluded not to send them back; but bids them stay, flourish, fructify, beautify their adopted home, and consider themselves naturalized. Every plant, from the

tropic to the pole, flourishes here. The palm, which belongs to the hot countries; the fig and olive, of the milder climate; and the fir, pine, beach and maple, of the northern clime, all live here in health as though indigenous.

There is no part of the State, probably, where the climate is more healthy and agreeable the year round than in this valley. I do not mean to say that there are no disagreeable days here, but as few as in any other location. San Rafael and Santa Barbara have often been spoken of as having the most agreeable climate in the State. A physician not long ago observed to me that he had experienced a hotter day at San Rafael than ever in San José, and that he had observed in Santa Barbara in the month of November a colder and more disagreeable day than ever in San José. His residence had been of sufficient length in this valley to be able to speak of its climate.

There is no climatic disease here. This remark, however, applies generally to the State; yet, perhaps, there are some locations of which it is not quite true. There is less fog here during the year than in most any other town in the State. The amount of rain here per annum is, on an average, about sixteen inches. In San Francisco, about twenty-one inches and forty-one hundredths. In Astoria, eighty-six inches and thirty-five hundredths, and in New York, forty-three inches and sixty-five hundredths.

As an illustration of the character of this climate, I give the following statement of a monthly average of the temperature, taken from thermometrical observations made by Mr. Jackson Lewis, in San José, three times a day, for the period of one year, commencing with the month of June, 1850, and ending with May, 1851:

1850.	6 A.M. deg.	12½ P.M. deg.	6 P.M. deg.
" June	52.40	77.03	60.40
" July	55.32	81.71	64.84
" Aug.	53.16	83.74	64.87
" Sept	55.63	79.17	65.10
" Oct.	46.48	74.68	63.06
" Nov.	34.40	59.77	52.30
" Dec.	36.61	53.68	45.26
1851 Jan	36.68	54.42	48.
" Feb.	38.93	58.32	48.61
" March	39.99	62.58	51.29
" April	50.37	69.23	54.
" May	48.26	69.90	54.97

It is somewhat difficult for the people abroad to form correct notions in regard to the California climate; more properly said, climates. No other part of the United States can exhibit so many climates within the same area. The people in the East, find by conversing with Californians from the various parts, that the statements are in conflict, one with the other. Strangers, soon after their arrival here, ascertain that the isothermal lines run north and south; that latitude does not indicate the temperature, but rather the proximity

to the ocean. These isothermal lines exemplify how little the temperature of a given locality depends upon its distance from the equator.

Let us examine into the philosophy of the Pacific climates. I cannot do better than use the very language of Lieutenant Maury. He says: "The calm and trade-winds regions, or belts, move up and down the earth, annually, in latitude nearly a thousand miles. In July and August, the zone of equatorial calms is found between seven deg. north and twelve deg. north; sometimes higher; in March and April, between latitude five deg. south and two deg. north. With this fact, and these points of view before us, it is easy to perceive why it is that we have a rainy season in Oregon, a rainy season and a dry season in California, another at Panama, two at Bogota, none in Peru, and one in Chili. In Oregon it rains every month, but about times five more in the winter than in the summer months. The winter there is the summer of the southern hemisphere, when this steam-engine is working with the greatest pressure. The vapor that is taken by the southeast trades is borne along over the region of northeast trades to latitude thirty-five or forty deg. north, where it descends and appears on the surface with the southeast winds of those latitudes. Driving upon the high lands of the continent, this vapor is condensed and precipitated, during this part of the year, almost in constant showers, and to the

depth of about thirty inches in three months. In the winter, the calm belt of Cancer approaches the equator. This whole system of zones, viz.: of trades, calms and westerly winds, follows the sun; and they of our hemisphere are nearer the equator in the winter and spring months than at any other season. The southeast winds commence at this season, to prevail as far down as the lower part of California. In winter and spring, the land in California is cooler than the sea air, and is quite cold enough to extract moisture from it. But in summer and autumn the land is the warmer, and cannot condense the vapors of water held by the air. So the same cause which made it rain in Oregon, now makes it rain in California. As the sun returns to the north, he brings the calm belt of Cancer and the northeast trades along with him; and now, at places where, six months before, the southwest winds were the prevailing winds, the northeast trades are found to blow. This is the case in the latitude of California. The prevailing winds, then, instead of going from a warmer to a cooler climate, as before, are going the opposite way. Consequently, if, under these circumstances, they have the moisture in them to make rains of, they cannot precipitate it. Proof, if proof were wanting, that the prevailing winds in the latitude of California are from the westward, is obvious to all who cross the Rocky Mountains or ascend the Sierra Madre."

The winds, then, we perceive, which modify the climate, come from the Pacific; and any given locality receives the breeze in proportion as the depression of the land between it and the ocean gives free circulation. In the summer months, it comes with great force through the Golden Gate, rushing against the hills in Alameda county; thence deflecting and puffing gently over the valley of Santa Clara from the northwestward.

And, thus, while many other valleys are panting in the noontide heat, and San Francisco is wrapped in the chilly blast from the sea, Santa Clara Valley is gently fanned with delicate winds that come stealthily over the bay, and seem prepared from prescriptions of Nature's physician, to temper justly the climate for the health and pleasure of man.

It will be of more than ordinary interest to the reader to peruse and meditate upon the opinion of the distinguished traveler and author, Bayard Taylor, in his description of this valley. In number five of his "Pictures of California," he thus writes: "How shall I describe a landscape so unlike anything else in the world; with a beauty so new and dazzling, that all ordinary comparisons are worthless? A valley ten miles wide, through the centre of which winds the dry bed of a winter stream, whose course is marked with groups of giant sycamores, their trunks gleaming like silver through masses of glossy foliage; over the level floor of this valley parklike groves of oaks, whose

mingled grace and majesty can only be given by the pencil; in the distance, redwood rising like towers; westward, a mountain chain, nearly four thousand feet in height, showing through the blue haze dark green forests on the back ground of blazing gold; eastward, another mountain chain, full-lighted by the sun, rose color touched with violet shadows, shining with marvelous transparency, as if they were of glass, behind which shone another sun; overhead, finally, a sky whose blue lustre seemed to fall, mellowed, through an intervening veil of luminous vapor. No words can describe the fire and force of the coloring—the daring contrast which the difference of half a tint changed from discord into harmony. Here the Great Artist seems to have taken a new palette, and painted his creation with hues unknown elsewhere. Driving along through these enchanting scenes, I indulged in a day-dream. It will not be long, I thought—I may live to see it before my prime of life is over—until San José is but five days journey from New York. Cars, which shall be, in fact, traveling hotels, will speed on an unknown line of rail from the Mississippi to the Pacific. Then let me purchase a few acres on the lowest slope of these mountains, overlooking the valley, and with a distant gleam of the bay; let me build a cottage, embowered in acacia, and eucalyptus, and the tall spires of the Italian cypress; let me leave home when the Christmas holidays are over,

and enjoy the balmy Januarys, and Februarys, the heavenly Marches and Aprils of my remaining years here, returning only when May shall have brought beauty to the Atlantic shore! There shall my roses outbloom those of Pæstum; there shall my nightingales sing, my orange-blossoms sweeten the air, my children play, my best poem be written. I had another and grander dream. One hundred years had passed, and I saw the valley, not as now, only partially tamed and reveling in the wild magnificence of Nature, but from river-bed to mountain-summit, humming with human life. I saw the same oaks and sycamores, but their shadows fell on mansions, fair as temples, with their white fronts and long colonnades. I saw gardens refreshed by gleaming fountains; statues peeping from the bloom of laurel bowers; palaces built to enshrine the new Art which will then have blossoms here; culture, plenty, peace, happiness everywhere. I saw a more beautiful race in possession of this paradise—a race in which the lost symmetry and grace of the Greek was partially restored; the rough, harsh features of the oriental type gone; milder manners, better regulated impulses, and a keen appreciation of the arts which enrich and embellish life. Was it only a dream?"

May I not take down that picture from the easel as finished? If I take up the brush, what part can I improve in symmetry? What part can

I finish with a finer lustre, or give a more delicate shade? Well may we say that there is no place within the jurisdiction of the United States, scarcely any in the world, where man can, so many days as here, in the three hundred and sixty-five of the revolving year, exclaim, in truth, with the poet—

> "Sweet day, so pure, so calm, so bright,
> The bridal of the earth and sky."

APPENDIX NO. 1.

COLONIAL GOVERNORS OF CALIFORNIA.

Spanish Governors—1767 to 1822.

Gasper de Portala, from 1767 to 1771.

Felipe Barri, from 1771 to December, 1774.

Felipe de Neve, from December, 1774, to September, 1782.

Pedro Fages, from September, 1782, to September, 1790.

José Antonio Romen, from September, 1790, to April, 1792.

José Joaquin de Arrillaga, from April, 1792, to May, 1794.

Diego de Borica, from May, 1794 to 1800.

José Joaquin de Arrillaga, from 1800 to 1814.

José Arguello, from 1814 to 1815.

Pablo Vincente de Sola, from 1815 to November, 1822.

Mexican Governors—1822 to 1846.

Pablo Vincente de Sola, from November, 1822, to 1823.

Luis Arguello, from 1823 to June, 1825.

José Maria Echeandia, from June, 1825, to January, 1831.

Manuel Victoria, from January, 1831, to January, 1832.

Pio Pico, from January, 1832, to January, 1833.

José Figueroa, from January, 1833, to August, 1835.

José Castro, from August, 1835, to January, 1836.

Nicolas Gutierrez, from January, 1836, to May, 1836.

Mariano Chico, May, 1836, to 1836.

Nicolas Gutierrez, from 1836 to 1836.

Juan B. Alvarado, from 1836 to December, 1842.

Manuel Micheltorena, from December, 1842, to February, 1845.

Pio Pico, from February, 1845, to July, 1846.

AMERICAN MILITARY GOVERNORS—1846 TO 1849.

Commodore John D. Sloat hoisted the American flag at Monterey, July 7, 1846, and by proclamation took formal possession of California, in the name of the United States Government.

Commodore Robert F. Stockton. Proclamation dated at Los Angeles August 17, 1846.

Colonel John C. Fremont. Appointed by Commodore Stockton, January, 1847.

General Stephen W. Kearny. Proclamation dated at Monterey, March 1, 1847.

Colonel Richard B. Mason. Proclamation dated at Monterey, May 31, 1847.

General Bennet Riley became Military-Governor, April 13, 1849.

The treaty ceding California and New Mexico to the United States was dated at the City of Guadalupe Hidalgo, February 2, 1848; exchanged at Queretero, May 30, 1848; ratified by the President, March 16, 1848; and proclaimed by the President, July 4, 1848. The State Constitution adopted November, 1849, went into effect December 15, 1849.

APPENDIX NO. 2.

PUEBLO OF SAN JOSE.

1845.—Antonio Maria Pico, First Alcalde.

1846.—Dolores Pacheco, First Alcalde; Pedro Chabolla, Second Alcalde; John Burton (after July) First Alcalde; James Stokes (after middle of July,) Justice of the Peace.

1847.—John Burton, First Alcalde.

1848.—Charles White, First Alcalde; James W. Weeks, Second Alcalde.

1849.—H. K. Dimick, to August, First Alcalde; Richard M. May, from August to November, First Alcalde; John C. Conroy, from November, First Alcalde; José Fernandez, Second Alcalde; John T. Richardson, ftom November 2d to December 3d, Judge of First Instance; Wm. M. Kinkaid, from December 3d, Judge of First Instance.

1850.—John C. Conroy, First Alcalde; Wm. M. Kinkaid, Judge of First Instance.

Mayors of the city of San José from 1850 to 1870: Josiah Belden, from April 1850, to 1851; Thomas White, from April, 1851 to 1854; O. H. Allen, from December, 1854 to 1855; S. O. Houghton, from April, 1855 to 1856; Lawrence Archer, from April, 1856 to 1857.

Board of Trustees, with a President: R. G. Moody, President from April 20th, 1857, to 1858; P. O. Minor, President from April 19th, 1858, to 1859.

Thomas Fallon, Mayor from April, 1859 to 1860; R. B. Buckner, Mayor from April, 1860 to 1861; Joseph W. Johnson, Mayor, from April, 1861 to 1863; J. A. Quimby, Mayor from April, 1863 to 1868; Mark Leavenworth, Mayor from 1868 to 1870; Adolph Pfister, present Mayor.

APPENDIX NO. 3.

[See California Archives, Vol. 1, Missions and Colonization, page 732, 762 (also page 746); 1 Rockwell, 445; Halleck's Report, Ex. Doc. No. 17, 1st sess., 31st Cong., H. of Rep., pages 134–139.]

Extract from regulations for the Government of the Province of California, by Don Felipe De Neve, Governor of the same, dated in the royal presidio of San Carlos de Monterey, 1*st June,* 1779, *and approved by his Majesty in a royal order of the* 24*th October,* 1781.

TITLE THE FOURTEENTH—POLITICAL GOVERNMENT AND INSTRUCTIONS RESPECTING COLONIZATION.

Section 1. The object of greatest importance towards the fulfilment of the pious intentions of the King our master, and toward securing to his Majesty the dominion of the extensive country, which occupies a space of more than two hundred leagues, comprehending the new establishment of the presidios and the respective ports of San Diego, Monterey and San Francisco, being to forward the reduction of, and, as far as possible, to make, this vast country (which, with the exception of seventeen hundred and forty-nine Christians of both sexes in the eight missions on the road, which leads from the first to the last-named Presidio, is inhabited by innumerable Heathens) useful to the

State, by erecting Pueblos of white people (pueblos de gente de razon), who, being united, may encourage agriculture, planting, the breeding of cattle, and successively the other branches of industry, so that some years hence their produce may be sufficient to provide garrisons of the Presidios with provisions and horses, thereby obviating the distance of transportation and the risks and losses which the royal Government suffers thereby.

With this just idea, the Pueblo of San José has been founded and peopled and the erection of another is determined upon, in which the colonists (pobladores) and their families from the provinces of Sonora and Sinaloa will establish themselves, the progressive augmentation of which, and of the families of the troops, will provide for the establishment of other towns and furnish recruits for the presidio companies, thus freeing the royal revenue from the indispensable expense at present required for these purposes; and it being necessary to establish rules for carrying all this into effect, the following instructions will be observed:

Sec. 2. As an equivalent for the one hundred and twenty dollars and rations, which hitherto have been assigned yearly to each poblador (founder or colonist) for the first two years and the rations alone for the following one, calculated at a real and a half per diem free, for the three following ones, they will hereafter receive for each

of the first two years one hundred and sixteen dollars and three and a half reals, the rations to be understood as comprehended in this amount, and, in lieu of rations for the next three years, they will receive sixty dollars yearly, by which arrangement they will be placed on more favorable terms than formerly, taking into consideration the advance that was charged on what they were paid with and the discount on the rations furnished, which article they will in future receive at cost from the moment that these regulations be approved and declared to be in force, it being understood that the fore-mentioned term of five years, as regards this emolument, is to be reckoned from the day on which the possession of the house-lots and pieces of [cultivable] land (solares y suertes de tierras), which are to be distributed to each poblador in the manner hereafter mentioned, to be given; and the previous time, from the period of their enrolment, must be regulated according to the terms of their respective contracts, and, in order to avoid this expense, measures will be taken to have the new pobladores collocated and put in possession immediately on their arrival.

Sec. 3. To each poblador, and to the community (comon) of the Pueblo, there shall be given, under condition of repayment in horses and mules, fit to be given and received and in the payment of the other large and small cattle, at the just prices which are to be fixed by tariff, and of the

tools and implements at cost as it is ordained, two mares, two cows and one calf, two sheep and two goats, all breeding animals, and one yoke of oxen or steers, one plow-share or point, one hoe, one *coa*, (a kind of wooden spade, with a steel point), one axe, and one sickle, one wood-knife, one musket, and one leather shield, two horses and one cargo mule. To the community (comon), there shall likewise be given the males corresponding to the total number of cattle of different kinds, distributed amongst all the inhabitants, one seed jackass, another common one, and three she asses, one boar and three sows, one forge, with its corresponding anvil and other necessary tools, six crowbars, six iron spades or shovels, and the necessary tools for carpenter and cast work.

Sec.. 4. The house-lots to be granted to the new pobladores are to be designated by government in the situations, and of the extent corresponding to the locality on which the new Pueblos are to be established, so that a square and streets be formed agreeable to the provisions of the laws of the Kingdom; (conforme á lo prevenido por las Leyes del Reyno, y con su arrelgo se señalara exido competente para el Pueblo, y Dehesas con las tierras de labor que convenga para propios), and conformable to the same, competent common lands (ejidos) shall be designated for the Pueblo and pasture grounds, with the sowing lands that may be necessary for municipal purposes (propios).

Sec. 5. Each suerte of land, whether capable of irrigation or dependent on the seasons, (de riego de temporale), shall consist of two hundred varas in length and two hundred in breath, this being the area generally occupied in the sowing of one fanega of Indian corn. The distribution, which is to be made in the name of the King, our master, by the government with equality, and a proportion to the ground which admits the benefit of being watered, so that after making the necessary demarcation and reserving vacant (baldios) the fourth part of the number which may result, counting with the number of pobladores, should there be sufficient, each one shall have two suertes of irrigable land, and other two of dry ground, delivered to him, and of the royal lands (realengas), as many as may be considered necessary (convenientes) shall be separated for the propios of the Pueblo, (and those lots of land reserved for the King, (realengas) as many as shall be considered necessary, etc.;* and the remainder of these, as well as of the house-lots, shall be granted in the

*A defective translation in section five has produced some confusion. The word "realengas—lands belonging to the King," is translated so obscurely that it seems to include all the lands adjacent to the Pueblo and not specifically granted. This is not the case. The provision is that one fourth of the house-lots and sowing-lots (solares y suertes), shall be reserved to the King, and the lots, so reserved to the King, (realengas) shall be assigned as *propios*, or granted to new settlers. The original Spanish reads as follows: "Reservando valdias la quarta parte del numero que resulte, contando con el numero de Pobladores, si alcanzasen, se repartiran á dos suertes á cada uno de regadio, y otros

name of his Majesty, by the Governor, to those who may hereafter come to colonize, and particularly to those soldiers, who, having fulfilled the term of their engagement, or on account of advanced age may have retired from service, and likewise to the families of those who may die; but these persons must work at their own expense, out of the funds which each of them ought to possess, and will not be entitled to receive from the royal revenue either salary, rations, or cattle, this privilege being limited to those who leave their own country for the purpose of settling this country.

Sec. 6. The houses built on the lots granted and designated to the new pobladores, and the parcels of land comprehended in their respective gifts, shall be perpetually hereditary to their sons and descendants, or to their daughters who marry useful colonists, who have received no grants of land for themselves; *provided*, the whole of them

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dos de secadal y de las realengas se separarán las que parecieren convenientes para propios del Pueblo, y de las restantes se hara merced,'' etc. There is no colon between ''secadal'' and ''y de las realengas,'' as there is in the translation of Rockwell. Precisely the same language, with the same punctuation, occurs in the Instructions for the foundation of the ''Pueblo de nuestra, Señora de los Angeles,'' dated August 26th, 1778, and found in the Archives, vol. 1, Missions and Colonization, page 418. *Realengas*, therefore, refers to the solares and suertes so reserved, and to no other lands. That this is so, clearly appears from the official plan of the Pueblo of San Jose, adopted at its settlement, where three lots are marked Realengo. (California Archives, vol. 1, Missions and Colonization, page 684).

comply with the obligations to be expressed in these instructions; and, in order that the sons of the possessors of these gifts observe the obedience and respect which they owe to their parents, these shall be freely authorized, in case of having two or more sons, to choose which of them they please, being a layman, to succeed to the house and suertes of the town; and they may likewise dispose of them amongst their children, but not so as to divide a single suerte, because each and all of these are to remain indivisible and inalienable forever.

Sec. 7. Neither can the pobladores, nor their heirs, impose on the house or parcel of land granted to them, either tax, entail, reversion, mortgage, (cento, vinculo, fianza, hipoteca,) or any other burden, although [even if] it be for pious purposes; and should any one do so in violation of this just prohibition, he shall immediately be deprived of his property, and his grant shall, *ipso facto*, be given to another colonist who may be useful and obedient.

Sec. 8. The new colonist shall enjoy, for the purpose of maintaining their cattle, the common privilege of the water and pasturage, fire-wood and timber of the common forest and pasture lands, to be designated according to law, to each new Pueblo, (a provechamiento comun de aguas y pastos, leña y madera del exido y Dehesa que ha de señalarse con arrelgo á las Leyes á cada nuevo

pueblo,) and, besides, each one shall privately enjoy the pasture of his own land, but with the condition that as they have to possess and breed all kinds of large and small cattle; and if not being possible, that each one can dedicate himself to the taking care of the small stock consigned to them—as by so doing, they would be unable to attend to agriculture and public works—for the present, the small cattle, and the sheep and goats of the community, must feed together, and the shepherd must be paid by such community; and with respect to collecting together the large cattle, and bringing them to the corral, such as mares and asses, as may be required, this must be done by two of the pobladores, whom they must appoint amongst themselves, or as they may see fit, to look after this business, and thus the cattle of different kinds will be taken care of, and freed from the risk of running wild, at the same time that agricultural and other works of the community will be attended to; and each individual must take care to mark their respective small cattle and brand the large, for which purpose the records of the necessary branding irons will be made without any charge; but it is ordained that henceforth, no colonist is to possess more than fifty head of the same kind of cattle, so that the utility produced by cattle, be distributed amongst the whole of them, and that the true riches of the Pueblo be not monopolized by a few inhabitants.

Sec. 9. The new colonists shall be free and exempt from paying tithes, or any other tax, on the the fruits and produce of the lands and cattle given to them, provided that within a year from the day on which the house-lots and parcels of land be designated to them, they build a house in the best way they can, and live therein, upon the necessary trenches for watering their lands, placing at their boundaries, instead of landmarks, some fruit trees, or wild ones of some utility, at the rate of ten to each suerte; and, likewise, open the principal drain or trench, form a dam, and the other necessary public works, for the benefit of cultivation, which the community is bound particularly to attend to; and said community will see that the government buildings (casas reales,) be completed within the fourth year; and during the third a storehouse sufficiently capacious for a public granary, in which must be kept the produce of the public sowing, which, at the rate of one almud (the twelfth of a fanega,) of Indian corn per inhabitant, must be made from said third year to the fifth, inclusive, in the lands designated for municipal purposes (propios,) all the labor of which, until harvesting the crop, and putting it in the granary, must be done by the community comun,) for whose benefit alone it must serve; and for the management and augmentation thereof, the necessary laws to be observed will, in due time, be made.

Sec. 10. After the expiration of the five years they will pay the tithes to his Majesty, for him to dispose of agreeably to his royal pleasure, as belonging solely to him, not only on account of the absolute royal patronage which he possesses in these dominions, but also because they are the produce of uncultivated and abandoned lands, which are about to become fruitful at the cost of the large outlays and expenses of the royal treasury. At the expiration of the said term of five years, the new pobladores and their descendants will pay, in acknowledgment of the direct and supreme dominion which belongs to the sovereign, one half of a fanega of Indian corn for each irrigable suerte of land, and for their own benefit they shall be collectively under the direct obligation of attending to the repair of the principal trench, dam, auxiliary drains and other public works of their pueblos, including that of the Church.

Sec. 11. When the hogs and asses shall have multiplied, and the sufficient number of seed asses for covering the mares become adopted, and it be found practicable to distribute these two kinds of animals amongst the pobladores, it must be done with all possible equality, so that of the first kind each one may receive one boar and one sow, and of the second, one ass, which the owner will mark and brand.

Sec. 12. Within the five years stipulated, the new pobladores shall be obliged to possess two yoke of oxen, two plows, two points or plowshares, for tilling the ground, two hoes and the other necessary implements for agriculture, and by the end of the first three years their houses must be entirely finished, and furnished, each with six hens and one cock; and it is expressly forbidden that any one shall, during the forementioned period of five years, alienate by means of exchange, sale, or other pretext, to kill any of the cattle granted to them, or the respective increase thereof, excepting sheep and goats, which, at the end of four years, it is necessary to dispose of, or else they would die, and therefore they may, at their discretion, dispose of as many of these animals as arrive at that age, but not of any younger ones, under the penalty that whoever shall violate this order, made for his own benefit and for the increase of his prosperity, shall forfeit *ipso facto* the amount of the rations granted to him for one year; and whoever shall receive one more head of such cattle during the same time, in whatever state or condition they may be, shall be obliged to return them.

Sec. 13. At the expiration of said five years, the female breeding animal of every kind, excepting swine and asses, of which each poblador is only obliged to possess one sow and one ass, male or female, being preserved; the yokes of oxen or

steers designated for their agricultural purposes being provided, and they being furnished with a cargo-mule and necessary horses, they shall be at liberty to sell their bulls, steers, foals or horses, asses, sheep, castrated goats, and pigs and sows; it being forbidden to kill cows (except old or barren, and consequently unproductive ones), sheep or she goats, which are not above three years old, and to sell mares or useful breeding females, until each poblador be possessed of fifteen mares and one stallion, fifteen cows and one bull, twelve sheep and one ram and ten she-goats with one buck.

Sec. 14. No poblador or resident shall sell a foal, horse or mule, or exchange them, except amongst each other, after they are provided with the necessary number, for the remainder must be dedicated solely to the purpose of remounting cavalry of the presidio troops, and will be paid for at the just prices to be established, excepting all particularly fine horses or mules of said pueblos, under the penalty of twenty dollars, to be forfeited by whomsoever may violate this order. For every animal disposed of in any other manner than what is here stipulated, the half to be given to the informer and the other half to be applied to municipal expenses (gastos de republica).

Sec. 15. The Indian corn, beans, chick-peas and lentils, produced by the pueblo (que produzcan las cosechas de los pueblos), after the resi-

dents have separated what may be necessary for their own subsistence and for seed, must be bought and paid for in ready money at the prices established, or which may hereafter be established for provisioning the Presidio, and from the amount of the same there must be deducted from the amount of each poblador such provident sums as may be considered proper toward refunding the royal revenue the advances made in money, horses, cattle, implements, seeds and other articles, so that within the first five years the total amount must be paid.

Sec. 16. Each poblador and resident head of a family (vecino) to whom house-lots or parcels of land may have been, or in future shall be granted, and their successors, shall be obliged to hold themselves equipped with two horses, a saddle complete, a musket, and the other arms already mentioned, which are to be furnished them at first cost, for the defence of their respective districts, and in order that they may (without abandoning this first obligation) repair to where the Governor may, in cases of urgency, order them.

Sec. 17. The corresponding titles to house-lots, lands, and waters, granted to the new pobladors, or which may hereafter be granted to other residents (vecinos) shall be made out by the Governor, or commissary whom he may appoint for this purpose; records of which, and of the respective branding-irons, must be kept in the general book

of colonization, to be made and kept in the government archives, as a heading to which a copy of these instructions shall be placed.

Sec. 18. And, whereas, it is expedient for the good government and police of the Pueblos, the administration of justice, the direction of public works, the distribution of water privileges, and the carrying into effect the orders given in these instructions, they should be furnished with ordinary Alcaldes, and other municipal officers, in proportion to the number of inhabitants; the Governor shall appoint such for the first two years, and for the following ones, they shall appoint some one from amongst themselves to the municipal offices (los oficios de republica) which may have been established, which elections are to be forwarded to the Governor for his approbation, who, if he sees fit, may continue said appointment for the three following years.

APPENDIX NO. 4.

Isaac Branham and William L. Smith, Trustees for James F. Reed and others, against the Mayor and Common Council of the City of San José, and William Daniels, James C. Cobb, and S. O. Houghton, Commissioners of the Funded Debt.

The above entitled cause was instituted in the Third Judicial District Court of California, in and for the county of Santa Clara; and the defendants having submitted the case on demurrer, and the Court below having sustained the demurrer, plaintiffs appealed to the Supreme Court; whereupon, at the April Term, 1864, the judgment of the Court below was sustained.

The facts as alleged in the complaint, and as detailed in the opinion of the Supreme Court, are as follows: "By the Constitution the Pueblo of San José was declared the seat of government, until removed by law. The first session of the legislature was held at that place. There was then no building belonging to the State, or the Pueblo of San José, adapted to the purposes of the legislature, and the citizens of the Pueblo petitioned the Ayuntamiento or Town Council to procure one. This the Ayuntamiento endeavored to do, but failed for the want of means and credit. There-

upon, seventeen citizens of the Pueblo purchased a lot and building situated within the Pueblo, for the accommodation of the legislature.

In accordance with an understanding to that effect, a deed was made to Aram, Belden and Reed, in trust for the purchasers, who were to convey the property to the Pueblo whenever the Pueblo could pay for the same. On the ninth day of April, 1850, the Ayuntamiento purchased the premises from Aram, Belden, and Reed, at the price of thirty-four thousand dollars, payable within six months, with interest at six per cent. per month; and, to secure the payment of that sum, pledged the State scrip, or temporary loan bonds in the treasury, and the revenues which might be raised that year by taxation, and mortgaged what is known as the Pueblo lands. The first legislature met in the building thus purchased by the Ayuntamiento, and on the twenty-seventh day of March, 1850, it passed an Act incorporating the city of San José. By the provisions of the Act, the city of San José succeeded to all the legal rights and claims of the Pueblo, and became subject to all the liabilities incurred and obligations created by the Ayuntamiento.

The city government was limited in the exercise of its municipal powers to the geographical boundaries established by the Act, and over the pueblo lands situated outside of those limits the city government could exercise no authority, except to

"rent, lease or sell" the same. The City of San José thus became the successor in interest of the Pueblo of San José to the lot and building in question, on which the purchase money or a part of it was still unpaid, and the pueblo lands mortgaged by the Ayuntamiento to secure its payment. The city authorities took possession of the lot and building, and afterward sold them to the county of Santa Clara for the sum of thirty-eight thousand dollars, payable in three months, with interest at the rate of four and a half per cent. per month, and directed the proceeds of the sale to be applied toward the payment of the debt due to the Trustees, Aram, Belden and Reed. The moneys, when collected from the county, were not so applied, but were expended by the city government for other purposes. Thereupon the Trustees sued the city, and in December, 1850, recovered a judgment and a decree of foreclosure of the mortgage executed by the Ayuntamiento, under which the pueblo lands were sold by the Sheriff to Branham and White, Trustees, etc., plaintiffs in this action. The proceeds of this sale were more than sufficient to satisfy the judgment, and the same was duly satisfied of record and the overplus paid to and received by the city. On the twenty-sixth of May, 1851, the Sheriff conveyed the pueblo lands to the purchasers. After this purchase some dispute arose between the city and the purchasers concerning the lands in question, and the City Coun-

cil, by ordinance, authorized the Mayor to settle and arrange the dispute with the purchasers. Under this ordinance the Mayor entered into a contract with the purchasers on the twelfth of June, 1851, whereby, after reciting the purchase by the Trustees at the Sheriff's sale, it was agreed that the Trustees and the Mayor should conjointly sell the pueblo lands in such a manner as to realize to the Trustees the amount of the purchase money paid by them, and all costs and expenses. If the money thus realized should prove insufficient for that purpose, the city was not to be bound for the deficit. If, on the contrary, there should be a surplus, the same was to be invested for the benefit of the city and trustees in a railroad then contemplated between San José and San Francisco, the same to be invested in the proportion of three to one in favor of the Trustees. The contract also contained certain provisions touching "town lots" and "five-hundred-acre lots," and the confirmation of the pueblo title to the land; and in consideration of the covenants of the contract the city ratified and confirmed the title acquired by the Trustees at the Sheriff's sale, and released to them all the right and title which the city then had, or might thereafter acquire to the whole or any portion of the land.

This contract was duly ratified by the Common Council of the city, and the Mayor was directed to carry the same into effect. But the city after-

ward refused to do so, and conveyed all the right, title and interest in the land to the Commissioners of the Funded Debt of the City of San José.

Upon this state of facts the plaintiffs ask for various kinds of alternative relief: First, A decree setting aside the conveyance from the city to the Commissioners of the Funded Debt. Second, Or, if that cannot be done, a decree for the specific performance of the contract of the twelfth of June, 1851, against the city and the Commissioners, and an injunction perpetually restraining them from making further sales or conveyances of said lands, except in the manner and on the conditions specified in said contract of the twelfth of June, 1851; and also a decree requiring them to account with the plaintiffs for all moneys received by them, or either of them, from sales of land already made. Third, And, inasmuch as the purchase money paid by said Branham and White liquidated the debt of the city to Aram, Belden and Reed, if for any reason it shall be adjudged that the Sheriff's deed and the contract of the twelfth of June are invalid, plaintiffs ask that the satisfaction of the judgment in favor of Aram, Belden and Reed, and against the city, may be set aside, and the Sheriff's sale held for naught, and that they be subrogated to all the rights which Aram, Belden and Reed had in and to said judgment and mortgage prior to the satisfaction thereof, and that they have leave to proceed under said judgment, by ex-

ecution or otherwise, to collect the whole of said judgment, both principal and interest, with prayer for general relief.

The Court held that an Ayuntamiento had no power to mortgage the lands of the Pueblo, and that a mortgage on such lands given by it was a nulity; that the agreement made between the municipal authorities and the purchasers of the pueblo lands was void, because a confirmation of a void estate cannot operate in aid of that estate; and that the mistake of a purchaser buying at a judicial sale under a void decree was a mistake of law from which the Court could grant no relief.

APPENDIX NO. 5.

PUEBLO LANDS OF SAN JOSE.

Field Notes of the exterior boundaries of the Pueblo Lands of San José, situated in the county of Santa Clara, and finally confirmed to the city of San José. Surveyed under instructions from L. Upson, U. S. Surveyor-General, by G. H. Thompson, Dep. Surveyor. Survey commenced July 9th, 1866.

Commencing at a point on the Guadalupe river, as near as could be ascertained where the last live-oak on said river was in March, 1838, and which is the same point described in the decree as the termination of the northwest boundary line of the Pueblo Lands (all traces of said tree are now gone, but the point established is well known to be about the point where it formerly stood), at which point is set a redwood post, marked "P. S. J. 1." Thence from "P. S. J. 1." in the direction of a live-oak tree in the mountains, which is plainly seen from this point, N. 61½ deg., E. 554 chains (variation 16 deg. E.), to a live-oak about 20 inches in diameter, standing on the summit of a rocky chemisal point on the west side of the summit of the ridge. (This

tree was pointed out as the tree described in the decree as the point of beginning, or NE. corner of said Pueblo Lands. Said tree is also the NE. corner of the Rancho Los Tularcitos, and is marked "T.") Thence from said tree, following the line of the Rancho Los Tularcitos, as finally surveyed; S. 42 deg. 20 min., E. 176.60 chains, along the top of the ridge to a post in a stone mound, marked "T. No. 3," corner No. 3 of the Rancho Tularcitos; also, a post is set in the same mound, marked "P. S. J. 3;" thence leaving the line of the Rancho Los Tularcitos, and continuing along top of ridge, S. 52 deg., E. 400.68 chains, intersecting the line of the Rancho Cañada de Pala, 46.00 chains S., 61½ deg. W. from corner No. 3 of said rancho, at which point of intersection is a post marked "P. S. J. 4;" thence through the Rancho Cañada de Pala, S. 33¾ deg., E. 649.71 chains, to corner No. 7 of the Rancho Cañada de Pala, and corner of Sections 19, 20, 29 and 30 in Township 7 S. Range 3 E., a post being fixed in mound of stone, marked "P. S. J. 5;" thence along the hills called San Felipe, leaving the Rancho Cañada de Pala; S. 24½ deg., E. 1134.40 chains, to a monument of stone about six feet high and about eight feet at the base, on the summit of a rocky hill inside and near the northern boundary of the Rancho San Francisco de Las Llagas. (This monument was pointed out as the

SE. corner of the Pueblo Lands of San José, and answers to the description of the same given in the original survey and report of the Commissioners, of March, 1838.) Thence through the Rancho San Francisco de Las Llagas, S. 70½ deg., W. 554.00 chains, to a post on a steep hill-side, on the north side and about five chains from the head of branch of the Las Llagas, marked "P. S. J. 9;" thence over rough, brushy mountains, through the Rancho Las Uvas, N. 58 deg. 24 min., W. 1,074.24 chains, to a large live-oak tree called "El Encino," near the summit of a high spur of the Sierras, which was pointed out and described as one of the original boundaries of the Pueblo Lands of San José; said tree is seven feet in diameter, and is a very prominent landmark, marked "P. S. J. 11;" and running thence, descending the steep side of the Sierras, N. 10¾ deg., W. 333.75 chains, to a post in a mound of stone, marked "P. S. J. 14," on the summit of a small, isolated hill in the valley. (This hill was pointed out as being the hill described in the decree, and in the Commissioners' report of 1838, and was at that time established as one of the boundaries of the Pueblo Lands of San José.) Thence N. 15¾ deg., E. 347.47 chains, to a large monument of stone in a willow swamp, at the source of the Guadalupe river, one of the original boundary monuments of the Pueblo Lands of San José; a post is set in said monument of stone, marked "P. S. J. 16," and the

line running thence through willow swamp, N. 72 deg., E. 10.12 chains, to Station No. 16 of the Rancho San Juan Bautista, on the bank of the Guadalupe river; thence, general course north-westerly, with the meanders of the Guadalupe river, to the point of beginning.

The total number of square miles within the lands confirmed to the Pueblo is one hundred and one and seventy-six one-hundredths.

APPENDIX NO. 6.

STATEMENT OF PRIVATE LAND GRANTS

In Santa Clara County, confirmed by the United States Board of Land Commissioners, showing amount of land granted, name of grantee, and date of patent.

Arroyo de los Pilarcitos, one square league, Candelario Miramontes.

Cañada del Corte de Madera, Domingo Peralta.

Cañada de San Felipe y Las Animas, two square leagues, Charles M. Weber, patented August 9th, 1866.

Cañada de Pala, eight thousand by twelve hundred varas, José de Jesus Bernal, et al., patented August 9th, 1863.

Cañada de los Capitancillos, Guadalupe Mining Company.

El Corte de Madera, two square leagues, Maximo Martinez, patented June 14th, 1858.

El Posito de las Animas, three thousand and forty-two acres, Robert Walkinshaw.

Embarcadero de Santa Clara, one thousand varas, Barcelia Bernal.

Juristac, one square league, Antonio and Faustin German.

La Polka, one square league, Bernard Murphy, patented March 3d, 1860.

La Purisima Concepcion, one square league, Juana Briones.

Los Tularcitos, Antonio Higuera et al., heirs of José Higuera, patented July 8th, 1870.

Las Animas or Sitio de la Brea, José Maria Sanchez.

Las Coches, half square league, Antonio Suñol et al., patented December 31st, 1857.

La Laguna Seca, four square leagues, Liberata Cesaña Bull et al., patented November 24th, 1865.

Los Capitancillos, three quarters of a square league, Charles Fosset, patented February 3d, 1865.

Las Animas, Frederick E. Whiting.

Milpitas, one square league, José Maria Alviso.

Mission of Santa Clara, Juan C. Galindo.

Mission of Santa Clara, thirteen and thirteen-hundredths acres, church property, patented Mar. 3d, 1858.

Mission of San José, twenty-eight and thirty-three hundredths acres, church property, patented March 3d, 1858.

New Almaden Quicksilver Mine, two square leagues, Andres Castillero. Rejected.

Ojo de Agua de la Coche, two square leagues, Bernard Murphy, patented January 4th, 1860.

Potrero de Santa Clara, one square league, Robert F. Stockton.

Pastoria de las Borregas, three thousand two hundred and seven and a quarter acres, Martin Murphy, patented December 15th, 1865.

Pueblo of San José, Mayor and Common Council of San José, confirmed October 8th, 1866.

Pala, one square league, Ellen White et al., widow and heirs of Chas. White.

Quito, three square leagues, Manuel Alviso, patented May 14th, 1866.

Rincon de San Francisquito, Teodoro and Secundino Robles, patented February 19th, 1868.

Rincoñada del Arroyo de San Francisquito, half square league, Maria Antonio Mesa, widow of Rafael Soto.

Rancho del Refugio or Pastoria de las Borregas, three square leagues, Tomas Pacheco and Augustin Alviso.

Rincon de los Esteros, Francisco Berreyessa et al., heirs of G. Berreyessa.

Rincon de los Esteros, Rafael Alviso et al.

Rincon de los Esteros, two thousand acres, Ellen E. White.

Rincoñada de los Gatos, one and a half square leagues, Sebastian Peralta and José Hernandez; patented March 19th, 1860.

Santa Ana y Quien Sabe, seven square leagues, Juan Miguel Anzas and Manuel Larios, patented May 1st, 1860.

San Isidro, one square league, Quentin Ortega et al., patented September 27th, 1869.

San Francisco de las Llagas, six square leagues, Bernard, Daniel, James and Martin Murphy, patented March 19th, 1868.

San Antonio, one square league, Encarnacion Mesa et al., patented August 6th, 1866.

San Vicente, one square league, Maria L. B. Berreyessa.

Santa Teresa, one square league, Augustin Bernal, patented March 8th, 1867.

San Isidro, one square league, Quentin Ortega, patented October 22d, 1868.

San Francisquito, eight suertes (200 varas each), Maria Concepcion Valencia de Rodriguez et al., patented June 8th, 1868.

San Antonio, six thousand one hundred and two acres, William A. Dana et al., patented, no date recorded.

Ulistac, half square league, Jacob D. Hoppe, patented October 12th, 1868.

Las Uvas, three square leagues, Bernard Murphy, patented February 18th, 1860.

Yerba Buena or Socaye, twenty-four thousand three hundred and forty-two and sixty-four one hundredths acres, Antonio Chavolla, patented January 3d, 1859.

Tract of land, two thousand varas, confirmed to James Enwright.

Tract of land, fifty by sixty varas, confirmed to Francisco Arce.

Two tracts of land, three hundred and fifty-eight and fifty-one one hundredths acres, Mary S. Bennett.

Los Huecos, nine leagues, Hornsby and Roland, not yet surveyed. Granted May 6th, 1846, by Pio Pico, to Luis Arenas and John Roland.

APPENDIX NO. 7.

PART FIRST—POLITICAL.

LAW OF MARCH 20TH, 1837.

The interior government of the department shall be under the charge of the Governor, Departmental Legislature (Junta), Prefects and Sub-Prefects, Ayuntamientos, Alcaldes and Justices of the Peace.

Section I.—of the governor.

Article 1. His term of service and the necessary qualifications for election are specified in the sixth constitutional law.

It shall be his duty:

1st. To take care of the preservation of public order in the interior of the Department. 2d. To dispose of the armed force which the laws assign to him for this purpose, and in default thereof or where it may not be sufficient, to ask the necessary force from the military commandant, who cannot refuse it. 3d. To publish without delay, execute and cause to be executed, the laws and decrees of Congress, and circulate them through the Department. 4th. To execute also, and cause to be executed, the decrees and orders of the general govern-

ment, and the resolutions of the Departmental Legislature, previously approved, when necessary, by Congress. 5th. To remit to the general government, with his report, all the resolutions of the Departmental Legislature. 6th. To appoint the Prefects, approve the appointment of Sub-Prefects of the Department, confirm that of Justices of the Peace, and to remove any of those functionaries, having first the opinion of the Departmental Legislature, respecting such removal. 7th. To appoint likewise the other officers of the Department, whose appointment is not reserved to some other authority. 8th. To suspend the officers of the Department for a term not exceeding three months, and even deprive them of half their salary for the same period. 9th. To suspend the Ayuntamientos of the Department, with the consent of the Departmental Legislature.* 10th. In case of exercising either of the two foregoing attributes, he shall immediately report to the general government. 11th. To grant permission with a just motive, for a period not exceeding two months in each year, to government officers to be absent from their stations. 12th. To decide executively, and without appeal, the doubts which may arise respecting the election of Ayuntamientos, and admit or not the renunciations of the members

*When there is no Departmental Legislature organized, it has always been held that the power of removal and suspension rests with the Governor, who is responsible for his acts to the general government.

elected. 13th. To exercise, in union with the Departmental Legislature, with a casting vote in case of a tie, the rejecting power (exclusiva,) referred to in Article 22d, Attributes 8th of the fifth constitutional law.* 14th. To incite the tribunals and magistrates to the prompt and correct administration of justice, and report to the respective superior authorities the faults of the inferior ones. 15th. To watch over the revenue officers of the Department in the manner which shall be prescribed by law. 16th. To watch over the public health of the Department, taking, in concert with the Legislature, the necessary measures for its preservation. 17th. To take particular care that there be no want of elementary schools in any of the towns of the Department, and that the masters and mistresses, as far as the circumstances of the place will admit, possess good moral character and the necessary qualifications.

Art. 2. He may in his executive capacity, and without appeal, impose fines not exceeding two hundred dollars, which shall be paid into the municipal funds (propios y arbitrios,) of the place to which the person fined belongs; or, he may sentence the inhabitants of the Department who shall disobey him, or be wanting in respect, or who in any other manner disturb the public tranquillity, to one month at public works, or double the time of arrest, conforming himself to the cir-

*This has reference to the appointment of certain subaltern officers.

cumstances of the individuals, and allowing them a summary and verbal hearing, in case they should request it. But with respect to faults for which the law has provided a penalty, the existing regulations must be observed.

Art. 3. He shall hear complaints against the functionaries of the Departmental Government, and for faults cognizable by Government he may impose executively, and without appeal, a fine not exceeding fifty dollars, to be likewise paid over to the municipal funds; but said functionaries shall also be heard in a summary and verbal manner in case they desire it.

Art. 4. He may send vagabonds, idle persons, and such as have no known occupation, to the establishment dedicated to this object, or to such workshops or agricultural establishments as may choose voluntarily to admit them; but the persons so to be disposed of shall have the choice of the two latter destinations.

Art. 5. When the public tranquillity shall require it, he may give a written order to search houses and to arrest persons, and even without this requisite he may command the arrest of any delinquent caught in the act: but in either case the persons arrested must within three days be put at the disposal of the competent magistrate, to whom he will make a written report of the motives of the arrest.*

* It may be a question, whether this clause is not slightly modified by Article IV. Amendments to the Constitution of the United States.

Art. 6. On the report of the Prefect (the opinion of the Departmental Legislature being obtained,) he may grant permission to the Ayuntamiento, or authorities in charge of the administration and expenditure of municipal funds, to defray such extraordinary expenses as may be required for objects of necessity or common utility.

Art. 7. In case of necessity, or for motives of public utility, he may, in concert with the Departmental Legislature, grant permission to said authorities to alienate certain property belonging to the municipal funds (proprios y arbitrios), and any cession, donation or contract made without this requisite will be null and void.

Art. 8. He will issue the respective commissions to the officers whom by law he is entitled to appoint.*

Art. 9. At public meetings he will take precedence of all the authorities of the Department.

Art. 10. He will also preside at the Departmental Legislature, when he shall attend the sessions; but he shall only be entitled to vote in case of a tie, or in such cases as are or may be provided for by the Constitution and the laws.

Art. 11. Should he be in any town of the Department, he may preside without vote at the sessions of the Ayuntamiento thereof.

* The original text also states how he shall sign his name to different documents, when his family name, and when his mere flourish is sufficient. With us one and the same signature is always used.

Art. 12. He shall nominate and remove at pleasure the Secretary of the Departmental Government, but he cannot appoint to this office, or to that of Prefect, any public officer, without the consent of the authority who named him.

Art. 13. His ordinary residence shall be in the Capital of the Department, and in order to remove therefrom he will require the permission of the President.

Art. 14. He shall be the ordinary channel of communication between the supreme powers of the nation and the Departmental Legislature, and between the latter and the authorities of the Department.

Art. 15. In all official matters the Governor, whether regularly appointed or acting as such *ad interim*, shall be entitled to the appellation of "Your Excellency."

Art. 16. The salary of the Governor is regulated by the General Government, but can never exceed five thousand dollars per annum.

Art. 17. In temporary default of the Governor, another shall be named *ad interim*, in the same manner as the proper one. If the default should be of short duration, the senior (mas antigua) lay member of the Departmental Legislature shall take charge of the Government, as he shall in like manner do during the interval which may take place between the default of the Governor proper and the appointment of his successor *ad interim*.

Section II.—of the secretary.

Article 1. There shall be a Secretary's office in the Department, for the transaction of the affairs of its interior government.

Art. 2. The Secretary shall be the immediate head of the office, and shall form regulations for the interior government of the same, which must be submitted to the Governor, for him to approve or reform as he may see fit.

Art. 3. The Secretary shall authorize, under his signature, the publication and circulation of the laws, decrees and orders of the supreme powers, the determinations of the Departmental Legislature, the municipal ordinances of the Ayuntamientos, the interior police regulations of the Department, and the titles or dispatches issued by the Governor.

Art. 4. He shall carry on the Governor's correspondence with the inferior authorities, under his signature, restricting himself to what is directed by the Governor, and he shall be answerable for any deviation therefrom.

Art. 5. He shall likewise be answerable for the want of the *espedientes*, laws, decrees, orders and other papers which ought to be on file in the office.

Art. 6. Neither the Secretary, nor any of the clerks of the office, shall ask or accept any fees or emoluments for the despatch of any kind of business.

Art. 7. He shall be officially entitled to the appellation of "Honorable" (Señoria).

Art. 8. The salary of the Secretary is fixed by the Governor (with the approbation of the General Government), but can never exceed two thousand five hundred dollars per annum.

SECTION III.—OF THE DEPARTMENTAL LEGISLATURE.

Article 1. In this Department there shall be an assembly denominated the "Departmental Legislature," composed of seven individuals.

Art. 2. These persons shall be elected by the same electors who choose the Deputies to Congress, and the election must take place precisely on the day following that of said Deputies.

Art. 3. Seven substitutes shall likewise be named in the same manner as the foregoing, who shall fill vacancies that may occur, according to the order of their nomination.

Art. 4. The Departmental Legislature shall be entirely renovated every four years, and they will commence their functions on the first day of January following their election.

Art. 5. It belongs to the Departmental Legislature: 1st. To pass (iniciar) laws relative to taxes, public education, trade and municipal administration. 2d. To establish common schools in all the towns of the Department, and assign to them competent donations out of the municipal funds, where there are any, and, when not, to im-

pose moderate contributions. 3d. To order the establishment and repairs of the interior roads of the Department, establishing moderate tolls for the payment of the expenses. 4th. To dictate all regulations for the preservation and improvement of the establishments of public instruction and beneficence, and such as tend to the encouragement of agriculture, industry and commerce; but if such regulations should in any way be burdensome to the towns of the Department, they must not be put in execution until they be previously approved by Congress. 5th. To promote, by means of the Governor, whatever may be conducive to the prosperity of the Department in all its branches and to the well-being of its inhabitants. 6th. To form, in union with the Governor, the municipal ordinances of the Ayuntamientos and the regulations of the interior police of the Department. 7th. To examine and approve the accounts which are to be rendered of the collection and expenditure of the municipal funds (propios y arbitrios). 8th. To advise with the Governor in all affairs in which he may require it.

Art. 6. The Legislature will form its own regulations for its interior government, and elect its own subordinate officers.

Art. 7. Four members present are necessary to form a quorum.

Art. 8. The acts of the Legislature must be

signed by the senior member present, and by the Secretary.

Art. 9. Each one of the members of the Legislature shall be responsible for the opinion said Legislature may give to the Governor against an express law; and particularly if it be constitutional, or for bribery or subornation.

Art. 10. The Legislature shall be styled "Excellency;" the members "Honorable" (Señoria), in their official capacity; and they shall receive one thousand five hundred dollars per annum.

Art. 11. The Governor shall administer the oath of office to each member of the Legislature; in case that body be present, it shall be administered in their presence, to keep and cause to be kept the constitutional laws, and faithfully to fulfil the obligations of their situations, being responsible for the infractions with they commit, or do not impede.

Art. 12. The Legislature shall have a secretary, with a salary not to exceed one thousand two hundred dollars per annum.

Art. 13. The restrictions of the Governor and Departmental Legislature:—1st. They shall impose no illegal contributions, nor apply any contributions to other than those objects pointed out by law. 2d. They shall not adopt any measures for raising armed forces, except in such cases wherein they are expressly authorized by law, or when they may be ordered to do so by the General

Government. 3d. They shall not make use of any other authority than that granted to them by law.

Art. 14. The members of the Departmental Legislature cannot renounce their situations without a legal motive, to be approved by the Legislature itself, and sanctioned by the Governor.

Section IV.—prefects and sub-prefects.

Article 1. In each district there shall be a Prefect named by the Governor and confirmed by the General Government, who shall remain in office four years, and may be re-elected.

Art. 2. It belongs to the Prefects :—1st. To take care of public order and tranquillity in their district, with entire subjection to the Governor. 2d. To publish without delay, enforce and cause to be enforced, the laws and decrees of Congress which they may receive from the Governor, and circulate them in the towns of the district. 3d. To observe, and cause to be observed, the decrees and orders of the General Government, the resolutions of the Departmental Legislature, and of the Governor.

Art. 3. In order to carry out the foregoing powers and duties (atribuciones), they may in their own district impose, by their own authority, fines to the amount of one hundred dollars, to be delivered to the municipal fund of the place where the person fined belongs: or they may sentence to

fifteen days of public works, or arrest for double that period, those who disobey or are wanting in respect towards them, or who in any other way disturb the public tranquillity; attention being paid to the circumstances of the individuals, and a trial being allowed them in case they should require one; but with respect to such faults as have penalties assigned to them by law, the existing laws must be observed.

Art. 4. They will hear complaints against the functionaries of the Government of the district, and they may in their own authority impose upon them a fine of the amount of thirty dollars, to be applied to the municipal fund of the place to which the person fined belongs, for faults cognizable by Government; but, in case they should consider that said functionaries should be suspended, they will inform the Governor for him to determine what may be convenient.

Art. 5. They will resolve on their own authority the doubts which may occur respecting the election of Ayuntamientos, and accept or not the resignations of the members thereof and the Justices of the Peace, but the parties interested will nevertheless have the right to appeal directly to the Governor.

Art. 6. Should any one consider himself wronged in any of the three foregoing cases, he may appeal to the Governor, who will definitely decide what he may consider just.

Art. 7. When public tranquillity or the investigation of some crime make it necessary, they may give a written order to search certain houses and to arrest any person, and without this requisite they will order the culprit *in flagrante* to be secured, but in both cases they will, within three days, place the person arrested at the disposal of the competent judge, to whom they will manifest in writing the cause of the arrest.

Art. 8. With the consent of the Governor, they may order idle vagabonds, who have no known occupation, for the time necessary for their correction, to the establishments destined to that object, or to such manufactories or agricultural establishments as may choose to receive them voluntarily, the person sentenced being allowed to choose to which of the last two establishments he wishes to go.

Art. 9. They will incite the tribunals to render prompt and upright justice, informing the Governor of the defects they may note in the Magistrates, but without intermeddling in their functions.

Art. 10. They will take particular care that common schools be not wanting in any of the towns of the Department.

Art. 11. They will scrupulously take care that the masters and mistresses not only possess the necessary instruction, but they also be of good

moral character, the circumstances of the place being taken into consideration.

Art. 12. Should the want of funds prevent the establishment of schools, they will apply to the Governor that he may make it known to the Departmental Legislature.

Art. 13. They will propose to the Governor whatever measures they may judge proper for the encouragement of agriculture and all the branches of industry, instruction and public beneficence, and for the execution of new works of public utility and for the repairs of the old ones.

Art. 14. They will, by their own authority and agreeable to the laws, regulate the distribution of *common* lands in the towns of the district, provided there be no law suits pending in the tribunals respecting them, the parties interested having the right to appeal to the Governor, who, in concert with the Departmental Legislature, will decide definitely what may be the most convenient.

Art. 15. They will cause the sub-Prefects, Ayuntamientos and Justices of the Peace to comply faithfully with their respective obligations and see that they do not exceed their authority.

Art. 16. In the administration and expenditure of the funds of the towns, they will exercise the supervision which may be granted to them by the ordinances of the Ayuntamientos.

Art. 17. They will appoint the sub-Prefects,

sending the appointments to the Governor to obtain his approval.

Art. 18. Should not the Governor's answer arrive in time, owing to the loss of the mail or any other cause, the person appointed will take his situation on the first of January, in which the periodical renovation takes place, without prejudicing what the Governor may resolve.

Art. 19. They will also name the Justices of the Peace of the district, to be proposed to them by the sub-Prefects of the different towns, observing what is ordered in the two preceding articles.

Art. 20. The Prefects will communicate their appointments to the new sub-Prefects in an official letter, of which they will also send a copy to the former ones, that they may likewise officially inform the authorities of the towns.

Art. 21. In the same manner they will communicate the appointments to the new Justices of the Peace, and to those who have ceased, that these latter may inform all whom it may concern.

Art. 22. They will require from the military commandant the necessary force for the preservation or re-establishment of public tranquillity, and for the security of the roads.

Art. 23. The Prefects, on taking possession of their situations, will receive by inventory all the documents, laws, decrees, orders, and other papers belonging to the Prefect's office, and will in the

same manner deliver to their successors, they being responsible for any loss of said documents.

Art. 24. They shall be the ordinary channel of communication between the Governor and the subaltern authorities of the district; and whatever representations may be made by the latter to the former, must be accompanied with their remarks (information). Their ordinary place of residence shall be the chief town of the district, unless under particular circumstances the Governor may determine otherwise, with the consent of the Departmental Legislature.

Art. 25. Whenever they may think proper, they will consult with some competent judge, (juez de letras), who is bound to give his advice.

Art. 26. The Governor, in concert with the Departmental Legislature, and bearing in mind the different circumstances of the districts, will propose to the President of the Republic the salary which each Prefect ought to enjoy, but this must not exceed twenty-five hundred dollars per annum.

Art. 27. Each Prefect shall have a Secretary, which he may appoint and remove at pleasure, who shall have a salary of seven hundred dollars per annum. Neither the Prefects nor their Secretaries can ask or receive any emolument or fee for any kind of business connected with their offices.

Art. 28. The Prefects, on entering on their duties, will make oath in presence of the Ayunta-

miento of the chief town of their district; or, if there be no Ayuntamiento, then before a Justice of the Peace.

Art. 29. The Secretaries will take a similar oath before their respective Prefects.

Art. 30. The sub-Prefects have the same faculties, and are subject to the same obligations of the Prefects in their respective localities; but in all their official duties they are subject to the direction of the Prefect of their district. They can, however, of their own authority impose a fine of fifty dollars, or sentence to eight days labor on the public works, in the same manner and under the same restrictions as the Prefects. On entering upon the duties of their office, they take a similar oath, and are allowed three hundred and sixty-five dollars per annum for stationery, etc., which is the only salary they receive; they, however, are not prohibited from receiving fees.

Section V.—of the ayuntamientos.

Article 1. The capital of the Department, ports with a population of four thousand inhabitants, interior towns of eight thousand inhabitants, towns which had Ayuntamientos previous to 1808, and those to whom this right is given by special law, shall be entitled to Ayuntamientos or Town Councils.

Art. 2. In order to form a quorum for the trans-

action of business, more than one half of the members must be present.

Art. 3. The number of Alcaldes, Regidores, and Sindicos will be fixed by the Departmental Legislature, in concert with the Governor; but the first must not exceed six; the second, twelve; and the third, two.

Art. 4. The Alcaldes are to be removed every year; half of the Regidores the same; and when there are two Sindicos, one of them, the first appointed to be first removed, when there is only one Sindico, he must be changed every year.

Art. 5. The Alcaldes, Regidores, and Sindicos may be re-elected indefinitely, and no one can refuse to serve without a just cause, approved by the Governor or Prefect; or, in case of re-election, when two years have not expired; or, if within the same period they have acted in any other municipal situation, or as sub-Prefect, or as Justice of the Peace.

Art. 6. In case of the death or incapacity of any of the members of the Ayuntamiento, others may be elected to supply their places, unless the vacancy should occur within less than three months of the close of the year, in which case the periodical time must be waited for.

Art. 7. If the newly elected should be an Alcalde, he will take the place that was vacant; if a Regidor or Sindico, he will occupy the lowest place, and the others will ascend according to the

order of their appointment, until the vacancy be filled up.

Art. 8. In case of the suspension of an entire Ayuntamiento, or part of one, the Ayuntamiento of the preceding year will take its place in the whole, or in part, as it may happen.

Art. 9. The following persons cannot be members of Ayuntamientos: Officers appointed by Congress, by the General or Departmental Governments, the Magistrates of the supreme tribunals, the legal Judge of the lower Court (de primera instancia), clergymen, directors of hospitals or other charitable institutions.

Art. 10. The Ayuntamientos, under subjection to the sub-Prefects, and through them to the Prefects and Governor, will have charge of the police, health, comfort, ornament, order, and security of their respective jurisdictions.

Art. 11. They will consequently take care of the cleanliness of the streets, market-places, and public squares.

Art. 12. They will see that in each town there be one or more burying-grounds, conveniently located.

Art. 13. They will watch over the quality of all kinds of liquors and provisions, in order that nothing unsound or corrupted be sold.

Art. 14. They will take care that in the apothecary shops no rancid or adulterated drugs be sold,

to which end they may appoint intelligent persons of the faculty to examine them.

Art. 15. They will see that marshes be drained, and that stagnant and unhealthy waters be made to run off, and that everything which tends to injure the health of men or cattle be removed.

Art. 16. They will likewise take care of prisons, hospitals, and establishments of public beneficence which are not of private foundation.

Art. 17. The moment that any prevailing sickness makes its appearance in the district of the municipality, the Ayuntamiento will inform the sub-Prefect, or should there be no sub-Prefect, the Prefect, in order that through his means the necessary assistance may be administered; but this will not prevent the Ayuntamiento from taking in the meantime the necessary steps to cut off or restrain the evil in its commencement.

Art. 18. With this laudable object, they will name a committee of charity, composed of a Regidor or Alcalde, a Sindico, a physician (should there be one in the place), and two residents or more, should the Ayuntamiento think it necessary, according to the extent of the place and the duties to be performed.

Art. 19. The Ayuntamiento will remit semi-annually to the sub-Prefect, or in default of him to the Prefect, that he may forward it to the Governor, an account of the births, marriages and deaths in each of these periods, which must em-

brace all its district, and mention the sex, age, diseases of which they may have died, keeping in its records a copy of this document.

Art. 20. In order to obtain these data, they may ask them of the parish curates, the Justices of the Peace, the municipality, or any persons or corporation capable of furnishing them.

Art. 21. In order to attend to the ornament and comfort of the towns, they will see that the market-places be well distributed, and that every obstacle tending to hinder them from being sufficiently provided be removed.

Art. 22. They will take care of the preservation of the public fountains, and see that there be an abundance of water for men and cattle.

Art. 23. They will likewise endeavor, as far as possible, to have the streets straight, paved and lighted, and that there be public walks and abundant plantations, for the beauty and health of the towns.

Art. 24. It belongs to them to procure the construction and repairing of bridges, causeways and roads, and to encourage agriculture, industry, trade, and whatever they may consider useful to the inhabitants.

Art. 25. At the junction of different roads they will place inscriptions pointing out the respective directions and distances to the nearest towns.

Art. 26. It belongs to the Ayuntamientos to make contract for all kinds of diversions, licence having been previously obtained from the first local political authority.

Art. 27. The products from these contracts must be paid into the municipal funds.

Art. 28. If the regulations of police and good government should not embrace all the measures which the Ayuntamientos may consider necessary for the preservation of order and the security of persons and property, they may propose to the Governor whatever others they may deem convenient, in order that those which may appear just may be adopted.

Art. 29. They will see that in every town there be a safe and commodious prison; that in said prisons different departments be found for persons arrested and for prisoners, and they will take care that the latter be usefully employed.

Art. 30. They will pay careful attention to the establishment of common schools in every town, the masters and mistresses of which must be paid out of the municipal fund, and they will not only be careful to appoint proper persons, but to see that at all times they continue to be of good conduct and sound morals.

Art. 31. They will distribute, with all possible impartiality, the municipal duties imposed upon the citizens, guiding themselves by the existing laws, or by such as may hereafter be made.

Art. 32. They will watch over the arrangement of the weights and measures, agreeable to laws on the subject.

Art. 33. The Ayuntamientos, and every one of their members, whenever they may be called upon by the Prefect, sub-Prefect and Alcaldes, will render every assistance toward carrying into execution the laws, decrees and orders, and the preservation of public order.

Art. 34. They will have the administration and expenditure of the municipal funds to manage, being guided by the ordinances relating thereto, and having in view the expenses approved by the Government. Within the first two months of the year they will remit to the sub-Prefect, or in default of him to the Prefect, that he may send to the Governor, an account, with vouchers, of the total amount of municipal funds, and of the direction given them during the preceding year.

Art. 35. The municipal funds will be deposited with such person or persons as the Ayuntamientos may appoint, under its responsibility.

Art. 36. The mal-administration of the funds, and the expenditure thereof in expenses not designated by the ordinances of the Ayuntamientos, or which have not obtained the approbation of Government, involve the pecuniary and personal responsibility of each of its members who may prove to be culpable in its management, or who

may have given their votes in the resolutions of said corporation; but those who may not have voted for such resolutions will be free from responsibility.

Art. 37. The Ayuntamientos may appoint at their pleasure a Secretary, and assign him with the approbation of the Governor, who will act in concert with the Departmental Legislature, the salary that may be considered just; but he cannot be removed from his situation without the same approbation.

Art. 38. Should the municipal funds not be sufficient to pay the salary of a Secretary, the Regidores, by monthly turns, will perform his duties, and they will only be allowed stationery.

Art. 39. The members of the Ayuntamientos on taking office, will take the same oath as other political authorities; the Alcaldes (or the first one, should there be two or more) will take it at the hands of the Prefect or sub-Prefect, or, in defect of both, at the hands of the former Alcalde; and the other members of the corporation, as likewise the Justices of the Peace of the municipality, will also be sworn in by the Alcalde.

Art. 40. The Secretaries will take the same oath before their Ayuntamientos.

Section VI.—of the alcaldes.

Article 1. The Alcaldes, in the places of their usual residence, will take care of good order and public tranquillity.

Art. 2. They will watch over the execution and fulfilment of the police regulations, laws, decrees and orders, which may be communicated to them by the sub-Prefects, or, in their defect, by the Prefects, and they will duly circulate them to the Justices of the Peace of the municipality.

Art. 3. For the fulfilment of the objects mentioned in the preceding articles, they will ask for the necessary force from the Military Commandant.

Art. 4. In defect of such force, or if it should not be sufficient, and any citizens should ask assistance in order to secure their persons or property when they are in danger, and in general for the security or apprehension of criminals within their jurisdiction, and for the preservation of public order, they will call upon the citizens, who are strictly obliged to obey them the same as any other public authority.

Art. 5. They will cause the culprit, *in flagrante*, to be secured, and within three days will put him at the disposal of the competent Judge.

Art. 6. They will see that the residents of the place live by useful occupations, and they will reprimand the idle, vagabonds, persons of bad conduct and those who have no known occupation.

Art. 7. Those who, through drunkenness or any other motive, disturb the public tranquillity, or who disobey them, or are wanting in respect to them, they may, on their own authority, fine to

the amount of twenty-five dollars, to be applied to the municipal funds, or they may sentence to four days of public works, or double the time of arrest, taking into consideration the circumstances of the individuals and giving them a trial in case they may require it; but, with respect to crimes designated by law, the existing regulations must be observed.

Art. 8. Should any one consider himself aggrieved in the case of the preceding article, he may appeal to the immediate superior, who will definitely determine what he may esteem just.

Art. 9. They will assist and have a vote at the session of the Ayuntamientos, and they will preside over them according to order of their appointment when neither the Prefect nor sub-Prefect assist, and when they do preside their vote shall be decisive.

Art. 10. The temporary absence of the Alcaldes will be supplied by the Regidores according to the order of their appointment. The same will be practised in case of death, etc., until the person be elected who is to succeed them.

Section VII.—of the justices of the peace.

Article 1. The Departmental Legislature and the Governor, having previously heard the opinion of the respective Prefects and sub-Prefects, and bearing in mind the different circumstances of all the towns and villages of the Department, will

determine the number of Justices of the Peace which there should be in each of them, but they must not neglect to establish them in every ward and populous rancheria distant from a town.

Art. 2. The Justices of the Peace are to be named by the Prefect of the district on the recommendations of the respective sub-Prefects.

Art. 3. In every place of one thousand inhabitants or more, the Justice of the Peace shall have, under subjection of the sub-Prefect, and through him to the superior authorities, the same faculties and obligations as the Ayuntamientos, but in the management or supervision of the municipal funds, they will restrict themselves to what may be established in the ordinances to be made by the Departmental Legislature.

Art. 4. These Justices of the Peace, as well as those of places which do not contain one thousand inhabitants; those of the suburbs and rancherias at a distance from towns, and those of the quarters and wards of every populous town, shall have the faculties and obligations granted to and imposed on the Alcaldes in Section VI., Art. 1–6.

Art. 5. In the suburbs and rancherias distant from towns, and in such towns where only a Justice of the Peace is established, a substitute shall be named in the same manner as the real one, to take his place in case of temporary absence. In other places where there are several Justices of the Peace, they shall, during the present year,

1837, mutually supply the places of each other. In future this shall be done by the former Justices of the Peace, according to the order of their appointment, beginning with those of the last year.

Art. 6. The Justices of the Peace of those places in which the Ayuntamientos are to cease, will receive, by means of correct inventory, all the documents, books of Acts and whatever may belong to those corporations, and they shall remit a copy of it to the Governor that he may send it to the Departmental Legislature.

Art. 7. The Governor, in concert with the Departmental Legislature, will dictate convenient regulations relative to securing the municipal funds, until the ordinances fix the rules for their good management and expenditure.

Art. 8. The situation of the Justices of the Peace is a municipal office, which cannot be refused except for a legal cause, approved by the Governor or Prefect, after hearing the opinion of the authority that named or proposed him, or in case of re-election, if two years have not transpired, or if an equal time has not passed since he served as sub-Prefect.

Art. 9. The Justices of the Peace, on entering into office, will make the same oath as the other authorities at the hands of the sub-Prefect, or in default of him, before the last Justice of the Peace, or before the first one appointed, should there be several.

SECTION VIII.—GENERAL OBSERVATIONS.

Article. 1. The channels of communication established by this law cannot be deviated from, except in extraordinary circumstances, or in case of complaint against some functionary, through whose hands the communications ought to be forwarded.

Art. 2. The fines imposed by the functionaries mentioned in this law shall not be collected by themselves, but they shall order them to be delivered to the Treasurer or depository of the municipal funds, who will give the corresponding receipt, so that the person fined may satisfy the authority by which he was fined.

Art. 3. If those elected for Governors, members of the Departmental Legislature, Prefects, and persons employed in their Secretaries' offices, should receive a higher salary or pension from the public funds than the salary designated by this law, they shall continue to enjoy it, and to that end the excess shall be credited to them.

Art. 4. The laws which organized the economic-political government of the Department are abolished.

PART SECOND—JUDICIAL.

LAW OF MAY 23d, 1837.

SECTION I.—OF THE SUPERIOR COURT—(Tribunal.)

Article 1. The Superior Tribunal of California shall consist of four Judges (Ministros), and one Attorney-General, (fiscal) of which Judges the three senior ones shall compose the first bench (sala) and the junior ones the second.

Art. 2. The Tribunal shall have a President, who will remain in office two years, and may be reëlected; he shall be appointed by the Tribunal itself, from its own magistrates. In defect of the President the senior Judge shall preside.

Art. 3. The Judges and Attorney-General shall each receive a salary of four thousand dollars per annum.

Art. 4. The Superior Tribunals in a body shall be addressed with the title of "Your Excellency." The same title shall be given to each of the benches thereof, and the President, Judges and Attorney-General, shall officially be styled "Your Honor" (Señoria).

Art. 5. Whenever the number of Judges necessary to complete the benches shall be defective, through absence, recusation, vacancy, or any other cause, such deficiencies shall be supplied with primary Judges, (Jueces de primera instancia).

Art. 6. Within the three first months after

the installation of the Superior Tribunal, it shall form a tariff of the fees and dues to be collected in the Department by the primary Judges, Alcaldes, Advocates, clerks, and other judicial officers.

Art. 7. The second bench of the Superior Tribunal* shall take cognizance of the first appeals (en segunda instancia) in the civil and criminal causes of the territory mentioned in the first attribution of Art. 22d, 5th Constitution Law; and the first bench shall take cognizance of the second appeals (en tercera instancia).†

Art. 8. In the same manner shall causes instituted against magistrates and subalterns as mentioned in the second attribution|| be dispatched; and the second appeal mentioned in said attribution shall belong to the first bench. This bench shall also take cognizance of the right of appeal (recurso) mentioned in the third and fourth attributions.‡ In order to carry out the objects comprehended in the seventh, eighth, and ninth

* The powers of the Superior Tribunals, as originally organized, are given in Law 5th, Art. 22d, of the Constitution of Mexico, but the transfer of the territory to the United States has annulled or limited some of the powers so conferred.

† The causes referred to in the latter part of this Article, are those against the superior magistrates of the territory.

|| This has reference to causes against inferior magistrates and the subalterns and defendants of the Tribunal.

‡ These have reference to appeals from the Judges of First Instance, and the adjustment of competences of jurisdiction arising between subaltern Judges.

attributions,* a full tribunal of all the Judges shall sit, in which the Attorney-General shall also have a vote.

Art. 9. The Superior Tribunal, including the President, all the Judges, and the Attorney-General, shall, in the Capital of the Department, perform a general examination of prisons, including all places where prisoners may be detained, subject to the ordinary jurisdiction, and make a report of said examination to the government, that it may publish the same and take the necessary measures in virtue of its powers. At these examinations two members of the Ayuntamiento shall attend, (without any vote) with the magistrates of the Tribunals, next to the senior one, and the Ayuntamiento shall be previously informed of the appointed hour, in order that it may appoint those who are to attend.

Art. 10. Public examinations shall likewise be made by two of the Judges, acting by turns, and commencing with the junior ones. The President shall not be included; the Attorney-General and Secretaries shall attend, and likewise the Judges of first instance in criminal cases, with their respective clerks.

Art. 11. At both of these examinations all the prisoners shall present themselves. The magistrates, besides the customary examina-

* These have reference to the nomination of Judges, subalterns, and dependents of the Courts.

tions, shall personally inspect the habitations and scrupulously inquire into the treatment given to the prisoners, the food and attention bestowed upon them, and if they are loaded with more irons than the Judge has commanded, or are kept in solitary confinement (incomunicados) without orders. But if there should be prisoners of another jurisdiction in the public prisons, they shall confine themselves to examining how they are treated, correct the abuses and defects of the jailors, and report to the respective magistrates whatever further they may observe.

Art. 12. Whenever a prisoner shall ask to be heard, one of the Judges having cognizance of the cause, shall go and hear what he has to say, and report to the corresponding bench.

Art. 13. The reports or notices of the institution of suits or causes, which the inferior Judges have to address to the Superior Tribunal, shall be presented to the bench of Second Instance, for it to take the necessary measures for the speedy conclusion of the same, according as the nature and enormity of the crimes may require.

Art. 14. The Superior Tribunal shall see that the primary Judges in criminal cases, remit to it quarterly, circumstantial lists of the causes finished during that period, and of those still pending, expressing the date on which they commenced, and their actual state of forwarding, which shall be submitted to the bench of Second Instance, in

order that in view thereof, and after hearing the Attorney-General, the necessary steps may be taken toward the speedy and exact administration of justice.

Art. 15. The Attorney-General shall be heard in all criminal and civil causes in which the public interests, or the ordinary jurisdiction are concerned. When he acts as plaintiff, (actor) or pleads his own rights (coadyuvare sus derechos) he shall speak in Court before the attorney of the criminal, and may be constrained (apremiado) at the instance of the parties the same as any of them. His replies, whether in civil or criminal cases, shall never be concealed so that the parties interested cannot see them, and he cannot be recused (recusado).

Art. 16. To constitute a sentence, in a bench of three Judges, two perfectly coinciding votes are requisite.

Section II.—of the courts of first instance—(primeria instancia.)

Article 1. The Governor and Legislature, on the recommendation of the superior tribunal, shall designate the number of Judges of this Court in the chief town (cabecera) of each district, in conformity with the laws.

Art. 2. Where there is but one Judge of First Instance to a district, he shall have both civil and criminal jurisdiction; if more than one, these are separate.

Art. 3. Each Court shall have a Clerk and Recorder (Escribano y Escribiente) and an Executive officer (Comisario).

Art. 4. The salaries of the Judges and subalterns of this Court is fixed by the Governor and superior tribunal, in concert with the Departmental Legislature, to be afterward approved of by the General Government.*

Art. 5. The clerks or notaries (escribanos) of this Court are appointed by the superior tribunal on the recommendation of the Judges of the Court; the other subalterns are named by the Judges themselves, due notice of these appointments being given both to the Governor and superior tribunal.

Art. 6. These Judges, on entering upon their duties, must take the usual oath of office. In case of sickness, absence, death, etc., their places may be supplied, *ad interim*, by persons appointed by the superior tribunal, with the approbation of the Governor.

Art. 7. No Judge of First Instance can act in a civil or criminal case without the Clerk of the Court (Escribano), except in case there be no such Clerk, or where the case is too urgent to wait for his presence, in which case two witnesses must be

* The salary of the Judge of Civil Courts was fixed at $1,500, with the stipulated fees of office. Gov. Riley, in his proclamation, signified his intention to pay this salary to the Judge of First Instance in each political district of California.

called in, and the papers so witnessed must be afterward turned over to the custody of the Clerk.

Art. 8. The cognizance and jurisdiction of these Judges are limited to the judicial subjects of their territory.

Art. 9. All lawsuits and civil or criminal causes, of whatever description, shall be brought forward and carried on before the respective Magistrate of First Instance, excepting in cases wherein clergymen and military persons are privileged by the constitutional or other laws in force.

Art. 10. No complaint, either civil or criminal, involving simply personal injuries, can be admitted without proving, with a competent certificate, that conciliatory measures have been attempted, viz.: by means of arbitrators (hombres buenos.)

Art. 11. From the preceding Article are to be excepted verbal processes; those of contest respecting chaplaincies (capellanias colativas), and other ecclesiastical causes of the same description, in which the parties interested cannot come to a previous arrangement; the causes which interest the public revenue, the municipal funds of towns, public establishments, minors, those deprived of the administration of their property, and vacant inheritances. In the same manner, no conciliation is to be attempted for the recovery of any kind of contributions or taxes, whether national or municipal ones, nor for the recovery of debts which have the same origin. Neither is it neces-

sary in the trial of summary interdictions of possession, the denouncement of a new work or a retraction, nor in promoting the faculty of inventories and distribution of inheritances, nor in other urgent cases of the same nature; but should a formal complaint have to be afterward made which would cause a litigious process, then conciliation ought first to be attempted, but it must not take place in cases of bankruptcy where creditors sue for their dues; but it shall take place when any citizen has to demand judicially the payment of a debt, although it may arise from a public writing.

Art. 12. In the trial of causes which exceed one hundred dollars, but do not exceed two hundred dollars, the Judge will take cognizance by means of a written process according to law, but without appeal; nevertheless the parties may take advantage of the appeal of necessity before the superior tribunal, should the laws have been violated which regulate the mode of proceeding. This appeal shall be referred to the same Judge, in the terms and for the purpose mentioned in Article 20 of Section IV.

Art. 13. Any person who may be despoiled of or disturbed in his possessions, whether the aggressor be an ecclesiastic, a layman, or a military character, will apply to the legal Judge for restitution and protection; and cognizance of these matters are to be taken by means of the corres-

ponding very summary process, or even by means of the plenary one of possession, if the parties should desire it, with appeal to the respective superior tribunal; the judgment of property (juicio de propriedad) being reserved to the competent Judges.

Art. 14. The Judges of the First Instance, in their respective Districts, will take cognizance, by way of precaution, with the Alcaldes, in the formation of inventories, justifications, *ad perpetuam*, and other judicial matters of this kind, in which the parties have yet made no opposition.

Art. 15. They will likewise take cognizance of such civil and criminal causes respecting common crimes as may arise against the Alcaldes of their District.

Art. 16. Every sentence of first instance in criminal causes must be immediately notified to the person who entered the suit and to the culprit, and if either of them shall appeal, said causes must, without delay, be remitted to the superior tribunal, the parties being previously summoned.

Art. 17. If both the accused and culprit agree to the sentence, and the suit should be respecting trivial crimes for which the law imposes no corporeal punishment, the Judge will execute the sentence. But if the cause should be one respecting crimes which have such a punishment assigned to them, the process shall be remitted to the superior tribunal, the time for appealing

having passed, although the parties themselves should not appeal, they being previously cited.

Art. 18. In all civil causes in which according to law the appeal should take place in both effects, and be clearly admitted, the original acts of the process shall be remitted to the superior tribunal at the costs of the appellant, the parties being previously cited, that they may make use of their rights. But if said appeal be merely admitted in the devolutive effect and not in the suspensive one (efecto devolutivo y, no en el suspensivo), [the former of which means, the cognizance which a superior Judge takes of the determinations of an inferior one, without suspending the execution of them; and the latter, the same thing together with the suspension of the execution.—The translator] the remission must not take place until after the execution of the determination, whatever practice there may be to the contrary.

Art. 19. The Judges of First Instance, in the place of their residence, if there be no superior tribunal there, will in public make the prison examination, required by law; two members of the Ayuntamientos will also be present at the general ones, but without a vote; and every month a report of said examinations will be rendered to the superior tribunal. They will likewise go to the prison when any culprit asks for audience, and they will hear whatever he may have to say.

Art. 20. The inferior magistrate will also report to the superior tribunal, at farthest within the three days after commencing the causes, all such as they may be forming for crimes committed in the respective jurisdictions. They will likewise send to said tribunal quarterly a general list of those that they may have concluded at that time, and of such as still remain unfinished in their respective courts, expressing the state in which they may be, and the dates of their commencement.

SECTION III.—OF ALCALDES AND JUSTICES OF THE PEACE.

Article 1. It belongs exclusively to the Alcaldes of the Ayuntamientos, and to the Justices of the Peace, in places whose population consists of one thousand or more inhabitants, to exercise in their jurisdiction, with respect to all classes of persons, the office of conciliators.

Art. 2. It likewise belongs to such Alcaldes and Justices of the Peace to take cognizance of, and decide in their respective towns, all verbal processes which may occur; except those in which ecclesiastics and military persons are sued.

Art. 3. It belongs likewise to them to dictate in litigious cases the very urgent measures that will not admit of being taken before the primary Judges; and to take, under similar circumstances, the first steps in criminal causes, and also such others as they may be commissioned to do by the respective tribunals and primary courts.

Art. 4. Of the attributions comprehended in the three foregoing articles, the Justices of Peace of such places as do not contain one thousand inhabitants shall only exercise that of taking (whether in civil or criminal cases,) such steps as from their urgency do not give time to apply to the nearest respective authorities.

Art. 5. In order to verify the judgment of conciliation, whosoever may have to institute any civil suit, the value of which does not exceed one hundred dollars, or any criminal one respecting serious injuries, purely personal, shall make his complaint to the Alcalde or competent Justice of the Peace, demanding verbally to have the accused party summoned, in order to commence the trial of conciliation, and said Alcalde or Justice of Peace will immediately have the summons made out, which must mention the object of the complaint, and fix the day, hour, and place in which the parties have to appear; and both the accuser and the accused are to be told to bring each his arbitrator (hombre bueno), who must be a citizen in the exercise of his rights, and completed the twenty-fifth year of his age.

Art. 6. The accused party is bound to concur, in obedience to the summons of the Alcalde or Justice of Peace; but should he not do so, a second summons must be sent to him to appear at some newly appointed time, under a penalty of from

two to ten dollars fine; and should he still not come forward, shall be considered that the means of conciliation have been attempted, and that the trial is at an end (*i. e.* the trial of conciliation), and the fine imposed upon the accused party shall be irremissibly exacted.

Art. 7. It shall likewise be considered that the means of conciliation have been tried, and that the trial is concluded, if the person summoned appear before the Alcalde, or Justice of Peace, in obedience to the first or second summons, and say that he renounces the benefit of conciliation.

Art. 8. In the two cases treated of in the two foregoing articles, the corresponding record must be made in the respective book, and be signed in the first case by the Alcalde or Justice of Peace, the plaintiff and clerk (Escribano), if there be one, and if not, by two assisting witnesses; and in the second case, by the Alcalde or Justice of Peace, the plaintiff and defendant; and whenever the latter does not make his appearance, but renounces the aforesaid benefit, he must necessarily do it in writing.

Art. 9. When the parties do come forward, either personally or by means of their lawful representatives, to proceed with the trial of conciliation, the Alcalde or Justice of Peace and the arbitrators will make themselves acquainted with what the parties have to expose respecting the matter in dispute, and when the said parties re-

tire, the Alcalde or Justice of Peace will hear the opinion of the arbitrators, and will immediately, or within eight days at farthest, give the sentence which he may consider most fitting to avoid a law suit, and to bring about the mutual conformity of the parties.

Art. 10. Each Alcalde or Justice of Peace shall have a book entitled "Book of Conciliations," in which he shall note down a concise account of what occurs in the trials of conciliation, agreeably to what is ordered in the preceding article and in continuation of the conciliatory sentence dictated by the Alcalde or Justice of Peace, which must be notified to the parties interested in presence of the arbitrators, in order that they may say whether they agree to it or not, which must also be noted down and be signed by the Alcalde or Justice of the Peace, the arbitrators and parties interested.

Art. 11. When the parties agree to the sentence, the certified copies of the proceedings which they may ask for, shall be given to them, in order that the corresponding authority may carry it into effect, and if either of the parties should not agree, the Alcalde or Justice of Peace will give him a certificate that the means of conciliation have been attempted, but without success; the parties interested merely paying the costs of said certificates in the accustomed form.

Art. 12. In the same book of conciliations must be entered the record mentioned in Art. 8, and this book must remain in the archives when the Alcalde or Justice of Peace conclude the time of their appointment.

Art. 13. The fines mentioned in Art. 6 must be delivered to the respective Treasurers of the Ayuntamientos, in order that the amount of them may go toward paying the expenses of the books which are to be given to the Alcaldes and Justices of Peace.

Art. 14. These Alcaldes and Justices will decide by verbal process the civil complaints which do not exceed one hundred dollars, and the criminal ones respecting trifling injuries and other similar faults that do not merit any other punishment than a slight reprehension or correction.

Art. 15. The plaintiff or complainant who enters any suit of this kind, will apply to the competent Alcalde or Justice, and make his complaint verbally, and this authority will cause the defendant to appear, ordering each party to bring his respective arbitrator with him, who must have the requisites mentioned in Art. 5.

Art. 16. In verbal processes, also, the clerk (if there be one) will concur, or in his defect, two assisting witnesses; and after the Alcalde or Justice of Peace and the arbitrators have made themselves acquainted with the complaint of the one party and the defense of the other, these parties

shall retire and the Alcalde or Justice of Peace will hear the opinion of the arbitrators, and immediately or within eight days at the farthest, pronounce his definitive sentence or decision, which shall be ordered to be carried into execution by the same Alcalde or Justice of Peace, or by any other authority to which a proper certificate of said sentence be presented.

Art. 17. A concise account of the proceedings of these processes shall be entered in a book, called "Book of Verbal Processes," and in continuation, the definitive decision or sentence dictated on the subject, and this instrument must be signed by the Alcalde or Justice of the Peace, the arbitrators, the parties interested and the clerk or acting witnesses. This book shall also be placed in the archives when the Alcaldes or Justices of the Peace conclude their term of office.

Art. 18. Against the definitive sentences given in verbal processes, no other appeal can be admitted than that of the responsibility of the Alcaldes and Justices of the Peace to the superior tribunal, and in said processes no fees are to be recovered, but merely the costs of the certificates that may be given.

Art. 19. The attributions mentioned in Arts. 4 and 5 must necessarily be exercised by the Alcaldes or Justices of the Peace in presence of the clerks, if there be such, and if not, before two assisting witnesses.

Art. 20. When the subject brought before the Alcaldes or Justices of the Peace relates to the retention of the goods of a debtor, who wishes to make away with or conceal them; the prohibition of a new work, or other matters of like urgency, the Alcaldes or Justices of the Peace will themselves take such necessary steps as may be required to avoid the evils consequent on delay, and they will order the parties interested then to try the means of conciliation.

SECTION IV.—GENERAL LAWS.

Article 1. In every criminal suit the sentence of first appeal (segunda instancia) shall cause execution when it is perfectly agreeable to the first sentence, or if the parties agree to it.

Art. 2. In criminal causes there cannot be less than one appeal (dos instancias), even when the accuser and the culprit agree to the first sentence.

Art. 3. All witnesses to be examined in any civil or criminal cause must necessarily be examined by the proper tribunal or Magistrates which have cognizance of said causes, and if they should reside at other places they must be examined by the Magistrate or Alcalde where they live.*

Art. 4. Every person, of whatever class, privileges or condition, he may be, when he has to give his declaration as a witness in a criminal cause, is

* It may be a question whether this and some of the following articles are not modified by Arts. V. and VI. of the amendments to the Constitution of the United States.

obliged to appear for this purpose before the Magistrate who has cognizance thereof, without the necessity of previous permission from his chiefs or superiors.

Art. 5. The confrontation of witnesses with the culprit shall only be practiced when the Magistrate considers it absolutely necessary in order to find out the truth.

Art. 6. Both the confrontation mentioned in the preceding article, and the ratifications, are to be made in the process immediately after having examined the witness; the culprit being made to appear in order that he may know him, and the witness summoned in the act of ratification, which must take place immediately after the culprit retires.

Art. 7. If the first steps of the process (information summaria) take place before the culprit be apprehended, as soon as he is apprehended and his preparatory declaration shall have been taken, the witnesses which have to be examined must be summoned for the purposes mentioned in the preceding article.

Art. 8. No summons shall be sent which has not some relation to the crime, or which is judged to be useless or of no weight in the business as regards the eliciting of truth.

Art. 9. When the pleas alleged by the culprit have no relation to the crime, or cannot in any way diminish its enormity, or are unlikely or im-

probable, they shall be left out altogether without receiving the cause on proof (à prueba), in which case the trial (sumaria) being concluded, the culprit having been previously cited, and the Attorney-General in the superior tribunal, it shall be delivered to the attorney or defender of the culprit for him to answer to the charges in the term of three days, which having taken place the definitive sentence shall be given.

Art. 10. When any criminal escapes, he shall not be summoned by edicts or by the public crier; but requisitory letters shall be made out for his apprehension and the necessary steps taken for his recovery; in the meantime the trial shall be postponed, except as to collecting proof of the crime and its circumstances, but it shall be resumed when the apprehension takes place.

Art. 11. In cases where the plenary judgment has to be renewed, the cause shall be received on proof for a short time, to be postponed, according to its circumstances, as far as forty days, and only in the case of having to examine witnesses, or to receive some of the proof at such considerable distances as to make that term not sufficient, it may be postponed for sixty days without any restitution, or other resource taking place in these terms.

Art. 12. When the criminals interpose an appeal against any interlocutory proceedings, or any other appeal that has to go to the tribunal of Second or Third Instance, the continuance of the

cause shall not be suspended; and, therefore, if the original acts which caused the appeal, cannot be forwarded, certified copies must be sent.

Art. 13. In all civil and criminal causes, the interlocutory sentences must be pronounced within the precise term of three days; and the definitive ones shall be dictated by the Superior Tribunals within fifteen days after the first stage of the suit (vista,) be concluded, and by the Judges of First Instance, within eight days after finishing the causes.

Art. 14. In trials of property, plenary ones of possession, and any other civil trial wherein the amount disputed shall exceed four thousand dollars, appeal may be made to the tribunal of the Third Instance, if the parties wish it, although the second sentence agree with the first.

Art. 15. In the same trials, if the amount in qnestion be less than four thousand dollars, the sentence of the tribunal of Second Instance, will cause execution, if it correspond exactly with the first; that is, if the second sentence neither adds nor takes away anything which alters the substance or intrinsic merit of the First Instance, so that neither the condemnation to pay costs, nor any other demonstration of a similar nature, can be called in opposition to said agreement.



MAP of
PUEBLO LANDS OF SAN JOSE
finally confirmed to
MAYOR & COMMON COUNCIL of THE CITY OF SAN JOSE,
Surveyed under instructions from the
U. S. SURVEYOR GENERAL
by
GEORGE H. THOMPSON DEP. SUR.
JULY 1866
CONTAINING
TRACT Nº I 35669 acres
" II 19657
" III 7459
" IV 1524
" V 621
in all 65132 acres.
Note 1. The ancient limits of the Pueblo Lands are shown on this Map by lines shaded thus. The 5 Tracts remaining within said limits to the Pueblo of San Jose are tinted.
Note 2. The Mount Diablo Meridian Line in Township 8 South was adopted as the western boundary of the Tracts II and V because there remained but few fractional Lots of public Land in Range 1 East of said Township outside the Pueblo limits the greater portion of which Lots have been deeded by the Pueblo to third parties.
T.5 S. R.1E
T 5 S. R.1 W
T 6 S. R.1E
T.6 S. R.2 E.
T 7 S. R.1E
T 7 S. R 2 E
T 7 S. R1W
T 8 S. R1W.
T 8 S. R1E.
T 8 S. R2 E.
T 8 S. R3 E
T 9 S. R1W.
T 9 S. R1E.
T 9 S. R4 E.
T 10 S. R2 E
T 10 S. R.3E.
SALT MARSH
ALVISO
MILPITAS
Rancho Agua Caliente
Rancho Las Tularcitos
Rancho Las Milpitas
TRACT Nº I
BUELLIS HILLS
MOUNT DIABLO RANGE OF MOUNTAINS
Rancho Chabac
Palo Rancho
Rancho Cañada de Pala
PALA
CITY OF SAN JOSE
Sta CLARA
Rancho de los Coches
SANTA CLARA VALLEY
SIERRA AZUL
Mount Diablo Meridian Line
Rancho Yerba Buena
Rancho Santa Teresa
Rancho San Juan Bautista (Narvaez)
TRACT Nº III
SAN FELIPE HILLS
Pine Grove on Top of Main Range of Mountains
Santa Teresa or Pueblo Hills
PLAIN
Cuchilla de la Mina
Rancho La Laguna Seca
Rancho Cañada de San Felipe y las Animas
Second Standard Line South
Rancho San Vicente
TRACT Nº II.
TRACT Nº IV
Rolling and brushy ... cut by deep Ravines and deep brushy Cañons
Rancho Ojo de Agua de la Coche
Rancho San Francisco de las Llagas
TRACT Nº I
TRACT Nº II
TRACT Nº III
TRACT Nº IV
TRACT Nº V